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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 251

ISAAC SIMS, JR., PETITIONER,

vs.

GEORGIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED NOVEMBER 28, 1966
CERTIORARI GRANTED JUNE 26, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 251

ISAAC SIMS, JR., PETITIONER,

vs.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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[fol. 1] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

INDICTMENT—Filed October 6, 1964

THE GRAND JURY, selected, chosen and sworn for the County of Charlton, to-wit:

1. M. D. Thrift, Foreman
2. R. W. McDonald
3. Ed Brunson
4. Clarence Carter
5. D. R. Wainwright
6. Willie Dixon
7. Owen Taylor
8. H. T. White
9. B. H. Gowen
10. Donald Phillips
11. James A. Ross
12. Bob Glisson
13. J. Malcolm Wade
14. Ferris R. Gowen
15. James W. Altman
16. Roy A. Taylor
17. J. P. Conner
18. E. O. Roberson
19. J. C. Jones, Jr.
20.
21.
22.
23.

In the name and behalf of the Citizens of Georgia, charge and accuse Isaac Sims, Jr., with the offense of Rape. For that the said Isaac Sims, Jr. on the 13th day of April, in the year Nineteen Hundred and Sixty-three in the County aforesaid, did then and there unlawfully and with force and arms, did make an assault upon the person of Nola Jean Roberts, and did strike, beat, and choke and wound her, and did have carnal knowledge of and sexual intercourse with said Nola Jean Roberts, a female, forcibly and against her [fol. 2] will, contrary to the laws of said State, the good order, peace and dignity thereof.

Charlton Superior Court, October Term, 1964.

Nola Jean Roberts, Prosecutor.

Dewey Hayes, Solicitor-General, Waycross Judicial Circuit.

SPECIAL PRESENTMENT

WITNESSES FOR THE STATE, Nola Jean Roberts, F. F. Cornelious, Dr. Jackson, Homer Allen, Dudley Jones, Bob Adkins, Noah Stokes.

[File endorsement omitted].

The Defendant Isaac Sims, Jr. Waive formal Arraignment, copy of Bill of Indictment, list of witnesses, sworn before the Grand Jury, and agree to strike from a panel of 48 Jurors and plead not guilty.

This 7th day of October, 1964.

William H. Alexander, Howard Moore, Jr., Defendant's Attorney, Dewey Hayes, Dewey Hayes, Solicitor-General, Waycross Judicial Circuit.

[fol. 3] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

VERDICT—October 8, 1964

We, the Jury find the Defendant Guilty as charged. This 10-8-1964.

L. H. DeVane, Foreman.

[fol. 4] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

October Term, 1964

Indictment No. 1488

STATE OF GEORGIA

vs.

ISAAC SIMS, JR.

PLEA IN ABATEMENT—Filed October 7, 1964

Comes now, the defendant, ISAAC SIMS, JR., prior to pleading to said indictment, and moves this Court to abate the pending case under indictment No. 1488, and for grounds, shows as follows:

1.

That on October 6, 1964 the defendant was indicted for the crime of rape by the Grand Jury of Charlton County, Waycross Judicial Circuit, for the October Term, 1964.

2.

That the Grand Jury which returned a True Bill against the defendant was illegally composed, and the indictment returned by it against the defendant is illegal, erroneous and void, for the reason that it is in derogation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and Article I, Section 1, paragraph 3 of the Constitution of the State of Georgia of 1945, in that:

(a) Negroes have been systematically and arbitrarily excluded from service on grand juries in Charlton County for a period of many years;

(b) That there are many Negroes who own property and whose names appear on the Tax Digest of Charlton County and who are among the most intelligent and upright citizens in said County;

[fol. 5] (c) That over a period of more than ten years, there have been no Negroes, or virtually no Negroes,

who have served on the grand jury in Charlton County; that the sole reason for their arbitrary and systematic exclusion has been their race or color;

(d) That according to the United States Census for the year 1960, there are 2,656 persons living in Charlton County who were twenty-one years of age or over; of this group, 965 are white males and 963 are white females; whereas, 353 are non-white males and 375 are non-white females;

(e) That at no time in the history of Charlton County has a Negro served as a jury commissioner;

(f) That the jury commissioner select the names for the Grand Jury lists from the Tax Digests of Charlton County;

(g) That the Tax Digests of Charlton County are maintained and kept on the basis of race or color; that is, each digest is divided into a part for white taxpayers and one for Negro taxpayers.

3.

The Negroes have been systematically excluded or included on the Grand Jury lists of Charlton County, including the grand jury which returned a True Bill against the defendant in the instant case, over a period of many years.

4.

That the defendant is a member of the Negro race and a citizen of the United States and of the State of Georgia.

5.

That the defendant was not given any notice or furnished a reasonable opportunity to challenge the array of the grand jury prior to the time of the return of this indictment as a true bill.

[fol. 6] WHEREFORE, defendant prays that this indictment against him abate and be foreover barred.

/s/ Howard Moore, Jr., William H. Alexander, 859½ Hunter St., N. W., Atlanta, Georgia 20314.

Duly sworn to by Isaac Sims, Jr.

[Jurat omitted in printing].

[File endorsement omitted].

The within plea in abatement is hereby denied. B. H.
This 7 day October, 1964.

Ben Hodges, J. S. C.

[fol. 7] IN THE SUPERIOR COURT OF CHARLTON COUNTY
GEORGIA

OCTOBER TERM, 1964

INDICTMENT No. 1488

[Title Omitted]

CHALLENGE TO THE ARRAY—Filed October 7, 1964

The accused in the above-captioned indictment, having had the array of jurors summoned in the above case put upon him, hereby excepts to said array, and for cause of exception shows:

1.

That, at the time the said panel of traverse or petit jurors was impanelled, presently, and for many years in the past, Negroes have been systematically and arbitrarily excluded from service on the traverse juries and traverse jury lists in Charlton County on the grounds of their race or color in derogation of the Fourteenth Amendment to the United States Constitution, Section 1, and Article I, Section 1, paragraph 3 of the Constitution of the State of Georgia of 1945; or they have been systematically and arbitrarily included on traverse juries or traverse jury lists as of the time the current jury was impanelled and is now impanelled in derogation of the hereinbefore mentioned and designated constitutional provisions.

2.

That the accused is a member of the Negro race and is a citizen of the United States and of the State of Georgia.

3.

That the accused avers that Negroes have been systematically and arbitrarily excluded from or included for [fol. 8] service on traverse juries or traverse jury lists for a period of many years. When Negroes are systematically included on said jury lists, their names are usually placed at the end of the list and designated as

"colored" or "IC" or otherwise. Further, in circumstances where it is likely that a Negro will be selected as a juror in a criminal case involving a member of his race, they are systematically struck and challenged and thereby arbitrarily prevented from actually sitting as a juror in such cases due to their color or race.

4.

That there are many Negroes who own property and whose names appear on the Tax Digest of Charlton County and who are intelligent and upright citizens.

5.

That according to the United States Census for the year 1960, there were 2,656 persons living in Charlton County who were twenty-one years of age or over; of this group, 965 were white males and 963 were white females; whereas, 353 of said group were non-white males and 375 non-white females.

6.

That at no time in the history of Charlton County has a Negro ever served as a jury commissioner.

7.

That the jury commissioners are charged by law with the responsibility of selecting from among the names of those whose names appear on the Tax Digest of said county persons qualified by law to serve as traverse jurors and to place said names upon the traverse jury list, which is revised from time to time according to law.

[fol. 9] That the Tax Digests of Charlton County are kept and maintained on the basis of race or color; that is, said Tax Digests are divided by race or color with one section for white taxpayers and another section for Negro taxpayers. When and where the tax digests are not divided, on the basis of race or color, the race or color of the taxpayer is made to appear by symbol, descriptive reference, or otherwise designated. Therefore, the process for selecting traverse jurors in said county is inherently discriminatory and in derogation of Article I, Section 1, para-

graph 3 of the Constitution of the State of Georgia of 1945, and Section 1, Fourteenth Amendment Constitution of the United States, independent of any other facets, and aspects of the scheme and practice of selecting jurors in said county upon the basis of race or color.

9.

That the aforesaid process of selecting the names of grand and traverse jurors, increases the probability that Negroes will either be systematically and arbitrarily excluded or systematically and arbitrarily included from or for service on traverse juries in said country.

WHEREFORE, the accused prays that this allegation of this his challenge to the array be inquired into and that the said array be quashed, and that the accused have such other relief as is in the premises just and meet.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter St., N. W., Atlanta, Georgia 30314, Attorneys for the Accused.

[fol. 10] [File Endorsement Omitted]

Motion overruled.
This 7 day of October 1964.

Ben Hodges, J.S.C.

[fol. 11] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

WAYCROSS JUDICIAL CIRCUIT

[Title Omitted]

MOTION FOR CHANGE OF VENUE—Filed October 7, 1964

NOW COMES, ISAAC SIMS, JR., defendant named in the above-captioned indictment, before pleading to the same, and moves this Court for an Order changing the venue for the trial of the offense alleged in said indictment. As grounds therefor, movant shows:

1.

That on April 13, 1963 movant was taken into custody at gun point and subsequently charged with the offense of rape. On the day the alleged offense purportedly occurred, large crowds of white people gathered at or near the scene and burnt a car which they assumed was used by the perpetrator.

2.

That after the movant was taken into custody he was beaten by private citizens while in the custody and presence of law enforcing officers. Movant subsequently was taken to Ware County for safekeeping, because law enforcing officers feared for movant's safety.

3.

That at the October Term, 1963 of the Charlton County Superior Court movant was convicted by an all white jury of the offense of rape without a recommendation to mercy, [fol. 12] making the movant the first person sentenced to death for rape since 1913 in said county.

4.

That following movant's conviction as aforesaid his court-appointed white attorney, Carroll Russell, a resident of nearby Blackshear, Georgia, refused and failed to file a

motion for new trial or to otherwise appeal movant's conviction and withdrew from the case. This Court failed to appoint other counsel to appeal movant's conviction, which resulted in the Supreme Court of Georgia reversing movant's conviction on appeal from denial of his petition for writ of habeas corpus in the City Court of Reidsville within hours of the imposition of the death penalty brought by movant's present counsel. *Sims* v. *Balkoom*, 136 SE 2d 766 (1964).

5.

That the Honorable Dewey Hayes, who represented the state in the previous trial, upon inquiry by movant's present counsel as to the existence of a transcript of the proceedings had upon the trial of this indictment at the October Term, 1963 of this Court, concealed the existence of said transcript. However, the said Dewey Hayes appeared at the oral argument in the Supreme Court of Georgia and read from said transcript in his efforts to have that court affirm the denial of the petition for writ of habeas corpus, at which time the Chief Justice ordered the said Dewey Hayes to make said transcript available to movant's counsel. Movant's counsel were substantially hampered and frustrated by said concealment.

6.

That the alleged victim of the rape, Nola Jean Roberts, is the daughter of Mrs. Lonnie Roberts, who is the Post-[fol. 13] master of St. George, Georgia, near where the offense allegedly occurred. As Postmaster of St. George, Mrs. Roberts and her family are well known by all of the 2,656 persons resident in said county above the age of 21 and likely to be called for jury service in this case.

7.

That a total of 110 persons have been summons for jury service for the October Term, 1964 of this Court. On information and belief, approximately 14 or more of the persons whose names appear on said jury list are related by blood, marriage, or other substantial bonds of friendship and affection to officials of this Court and county and law enforcing officers involved at some stage in the

arrest, detention, and trial previously had of the offense alleged in the indictment.

8.

That, if in fact any Negroes have been summoned for jury service for the October Term, 1964 of this Court, the number actually summons is dis-proportionate to the number actually qualified to serve and results from the arbitrary and systematic exclusion or inclusion of Negroes for jury service long-practiced in said county.

9.

That this case has been the subject of much local and state-wide publicity. It has been the subject of newspaper articles and discussion in bar journals.

10.

That the movant is presently lodged in the Ware County jail at Waycross, Georgia, due to the fear and concern of local officials that due process will be aborted by those who harbor great dislike, prejudice and hostility in this county [fol. 14] for the movant.

11.

That to force the movant to trial on the said indictment in the Superior Court of Charlton County now holden at Folkston, Georgia, under the circumstances hereinbefore alleged violates the movant's right to a fair and impartial trial as provided for by the equal protection and due process of law clauses of the Fourteenth Amendment, United States Constitution and Article I, Paragraphs 3, 5, and 25 of the Constitution of the State of Georgia of 1945.

WHEREFORE, movant prays that his motion be inquired into and that the Court enter an Order changing the venue for the trial of said indictment, or in the alternative grant such other relief or Order as will secure to the movant a jury and forum uninfluenced by local prejudice and bias.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter Street NW, Atlanta, Georgia 30314, Attorneys for Movant.

[fol. 15] VERIFICATION

I hereby swear that the within motion is made in good faith and not for the purpose of delay and that the facts alleged therein which are matters of my own personal knowledge are true and those alleged on information and belief I believe to be true and correct.

This 7th day of October, 1964.

/s/ Howard Moore, Jr., Howard Moore, Jr.

Subscribed and sworn to before me, this 7th day of October, 1964.

William H. Alexander (Seal), Notary Public. My Commission Expires Sept. 4, 1967.

[File Endorsement Omitted]

Overruled.

This 7 day of October, 1964.

Ben Hodges, J.S.C.

[fol. 16] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA, WAYCROSS JUDICIAL CIRCUIT

[Title Omitted]

MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE—
Filed October 7, 1964

Now comes, ISAAC SIMS, JR., defendant in the above-captioned indictment, before pleading to the same, and moves this Court to suppress an alleged confession obtained from the movant in violation of the Fourth, Fifth, and Sixth Amendments to the United States Constitution as the same are made to apply to the State of Georgia by virtue of the Fourteenth Amendment thereto and in violation of Article I, Paragraphs 3 and 5, Constitution of the State of Georgia of 1945.

As grounds therefor, movant shows:

1.

That on April 13, 1963 movant alone, without counsel or friends to advise him, wholly ignorant of his rights, and in great pain and fear for his life, unwittingly and without understanding the legal significance signed the following statement:

"2-13-1963. 10:30 P.M.

I, Isaac Sims, Jr., age 27 years, resident of Folkston, Georgia, make the following statement freely and voluntarily; I have not been threatened or promised anything. I know that this statement can be used against me in Court.

[fol. 17] I, Isaac Sims, Jr., on April 13, 1963, was driving Cleo Jackson's 1953 or '54 Bel Air Chevrolet, colored brown and white. About 10 o'clock, A.M. I was driving down the St. George Highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time. The closer I got to her car I had a feeling to have dealings with this white woman. I took the car I was driving, bumped her car several times. Finally I knocked her

car in the ditch. I got out of my car as she got out of her car. I grabbed her. I pulled her across the road into some bushes. She was wearing pedal pushers, gray looking. She kept fighting me and I hit her in the face, knocked her down. She kept hollering for help. Then I was afraid someone would hear her, so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had a kotex on. I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car started. I would not crank, so then I realized that I was in trouble, and I ran through the woods to Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me there was a lot of people and dogs hunting someone. These colored boys went to Mr. Hopkins and told him where I was at the home of a girl named Margie. Mr. Stokes and another white man came and picked me up and carried me to the sheriff. The pants and [fol. 18] shorts I was wearing had blood on them. This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of the Ware County Police Department, Dudley Jones, Deputy Sheriff of Ware County, Georgia, and B. C. Worley, Constable of the 1231st District of Ware County, Georgia. I have been informed of my legal rights by Sheriff Robert F. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law. I have had the statement read, which consists of four pages, which is a true and correct statement made by me."

Said statement was signed in the presence of the law enforcing officers named therein in the Sheriff's office at the Ware County Jail, Georgia.

2.

That movant was taken into custody at gun point when he appeared at a friend's house in a place called Toledo, quarters for Negro pulp wood workers about 10 miles from

the scene of the alleged offense, at about 2.30 P.M., April 13, 1963. Movant was turned over by Negro employees of two white men who owned the quarters in which the Negroes lived. The white men took the movant to the scene where the offense allegedly occurred and turned him over to the Sheriff of Charlton County and a state patrolman. A large crowd of white people had gathered at the scene. Movant was taken from the scene to Dr. Jackson's office in Folkston, Georgia, where he was brutually beaten, manhandled, and stripped of his clothing. As [fol. 19] a results of the beating, eighteen stitches were taken over movant's right eye; movant experienced a partial lost of vision and other pains and discomforts which persisted for a considerable length of time. For safekeeping movant was taken from Folkston, Georgia, where he lived and worked, to Waycross, Georgia, about 35 miles from Folkston, and lodged in the Ware County jail.

3.

That movant cannot read or write. Movant was without counsel at the time he signed the alleged statement and did not know and meaningfully understand what was meant by his right to have and attorney at the time as alleged in said statement; nor did movant comprehen the meaning of said statement. Movant thought that he was required to sign said statement and did not understand that he was implicating himself in a crime which he did not commit.

4.

That movant is a member of the Negro race and a citizen of the United States and of the State of Georgia.

5.

That the totality of the circumstances under which said statement was obtained from the movant violate the Fourth, Fifth, and Sixth Amendments to the United States Constitution as made applicable to the State of Georgia by the Fourteenth Amendment thereto and Article I, Paragraphs 3 and 5, Constitution of the State of Georgia of 1945.

Wherefore, movant prays that this is motion to suppress illegally obtained evidence be inquired into and that said [fol. 20] evidence be suppressed and excluded on the trial of said indictment or in the alternative said indictment be quashed.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter Street, NW, Atlanta, Georgia 30314, Attorneys for Movant.

[File Endorsement Omitted]

The within motion is denied.

This 7 day of October, 1964.

Ben Hodges, J.S.C.

[fol. 21] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA, WAYCROSS JUDICIAL CIRCUIT

[Title Omitted]

PLEA IN ABATEMENT—Filed October 7, 1964

NOW COMES, ISAAC SIMS, JR., defendant in the above numbered indictment, before pleading to the indictment herein, files this is plea in abatement. As grounds therefor shows:

1.

That Title 26, Georgia Code Annotated, Section 1302, under which punishment is imposed for a conviction of the crime of Rape, a violation of Title 26, Georgia Code Annotated, Section 1302, is unconstitutional upon its face. Said statute fails to set out any standard by which the jury is to be guided in imposing punishment pursuant to it. Under said statute, the jury may impose any sentence it agree upon from electrocution, to life imprisonment, to one to twenty years in prison. To the extent that said statute imposes the sentence of death for rape, it contravenes evolving standards of decency and inflicts cruel and unusual punishment. Therefore, said statute violates the due process of law clause of the Fourteenth Amendment, United States Constitution, and Article I, Paragraph 3, Constitution of the State of Georgia of 1945, and the Eight Amendment, United States Constitution, as made applicable to the several states by the Fourteenth Amendment, United States Constitution. Said statute being worded thusly:

> [fol. 22] "*Punishment recommendation by jury to mercy.* The crime of rape shall be punished by death, unless the jury recommends mercy, in which event punishment shall be imprisonment for life; Provided, however, the jury in all cases may fix the punishment by imprisonment and labor in the penitentiary for not less than one year nor more than 20 years. (Cobb, 787. Acts 1866, p. 151; 1960, p. 266)."

That Title 26, Georgia Code Annotated, Section 1302, has been applied so as to deny persons of the Negro race the equal protection of the law in violation of the Fourteenth

Amendment, United States Constitution, and of Article I, Paragraph 25, Constitution of the State of Georgia of 1945; in that:

(a) the State of Georgia has primarily executed persons of the Negro race for the crime of rape, having executed 58 Negro persons and 3 white persons for the crime of rape since the year 1930; (b) should the death penalty be imposed upon the defendant in this case, it imposition will be erratic and arbitrary. Since 1913, only two other persons have been sentenced to death in Charlton County, Georgia. In each case the person so sentenced was charged with the offense of murder. In each case, after new trials, the sentences were commuted to life imprisonment; and (c) the pattern and practice of sentencing Negro persons to death for the crime of rape is a facet of the racial caste system which is deeply rooted in the history, public policy, [fol. 23] and attitudes which are prevalent within the State of Georgia and particularly in Charlton County, Georgia.

3.

That the defendant is a member of the Negro race and a citizen of the United States and of the State of Georgia.

WHEREFORE, defendant prays that this his plea in abatement be inquired into and that an order be entered abating the application of said statute to this indictment and that said statute be declared unconstitutional.

/s/ Howard Moore, Jr., Howard Moore, Jr., William H. Alexander, 859½ Hunter Street, N.W., Atlanta, Georgia 30314, Attorneys for Defendant.

[fol. 24] VERIFICATION

Duly sworn to by Isaac Sims, Jr., jurat omitted in printing (all in italics).

[File Endorsement Omitted]

The within plea in abatement is hereby denied. B.H.

This 7 day of October 1964.

Ben Hodges, J.S.C.

[fol. 25] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA LIST OF JURORS IN THE CASE OF

Wed.— —

Jury		State	Def.	
1	1			Lawrence Flewell
	2		1	Lewis Crews
	3			~~George W. Chism~~
	4		2	Charles J. West
	5		3	G. W. Crews
	6		4	W. C. Hall
	7		5	Arnold Johns
	8		6	George E. Bell
	9		7	Julian Crews
	10		8	C. L. Conner
2	11			S. C. Padgett
	12	1		Sol Houston
3	13			Cecil A. Parish
	14			~~Kenneth M. Crews~~
4	15			Harley Hickox
	16			~~Jimmy H. Crews~~
5	17			L. H. Devane
	18		9	Jack R. Mays
	19			~~Bruce L. Thompson~~
	20	2		Troy Robinson
	21		10	J. A. Prevatt
	22		11	Leon Petty
	23	3		Norris Mitchell
	24		12	Emanuel Knowles
	25			~~Albert Gowen~~
	26			~~George O. Harden~~
	27			~~Willie Crews~~
	28		13	W. C. Harden
[fol. 26]	29	14		Charlie Scarbrough
	30			~~Bobby James~~
	31		15	William Pafford
6	32			Basil Crews
	33			~~Leon Askew~~
	34			~~B. M. Prescott, Sr.~~
	35		16	C. L. Passieu
	36			~~Oscar H. Leckie~~
	37			~~O. D. Raulerson~~

Jury		State	Def.	
	38			~~William Smith~~
7	39			Richard P. Mays
	40			~~B. M. Prescott, Jr.~~
	41		17	T. H. McLean
	42		18	James Vernon Aldridge
	43		19	George Johns
	44		20	F. L. Murray, Sr,
8	45			Kenneth T. Wainwright
	46			~~Oscar S. Fowler~~
	47			~~Allen Nasworth~~
9	48			David Glisson
	49			~~Henry L. Bailey~~
	50	4		Vandell Redmond
	51	5		J. J. Conner
10	52			W. L. Morris Sr.
11	53			Cecil Privett
12	54			Charlie F. Lloyd
	55			Raymond Eugene Chesser
	56			Eldon Woolard Sr.
[fol. 27]	57			W. E. Renshaw
	58			E. M. Batton Jr.
	59			Dr. J. S. Taylor
	60			W. F. Price
	61			Eugene Davis
	62			Earl Crews
	63			E. Hickox
	64			Jerome Crews
	65			W. C. Mizell
	66			O. K. Lowther
	67			Buford Thrift
	68			Central Garard
	69			Charlie E. Harden
	70			Walter N. Coleman, Jr.
	71			Donald Nettles
	72			Vern J. Pickren

[fol. 28]

Lonnie Guinn
Herbert M. Crews
Lacy Conner
L. C. Black
Albert Brantley
James Bolden
Marvin D. Chancey
Wallace Hodges
Vinton Thompson
Edgar Woolard
R. L. Canaday
H. L. Clark
Emory L. Griffis
Robert Everett
L. R. Gainey
Edward Hickox
D. E. Sikes
Francis Turner
Morris Taylor
W. C. Odom
Bud Cantrell
Sherman W. Raulerson
Fred D. Askew, Jr.
J. D. Hickox
Cecil J. Glisson
J. T. Pascal
Felton Thrift

[fol. 29] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

MOTION FOR NEW TRIAL—Filed October 8, 1964

No. 1488

[Title omitted]

Verdict and judgment for The State at October Term, 1964 of Charlton Superior Court, on 8th day of October, 1964.

The Defendant being dissatisfied with the verdict and judgment in said case, comes during said term of court, before the adjournment thereof, and within 30 days from said trial, and moves the court for a new trial, upon the following grounds to wit:

1st. Because the verdict is contrary to evidence and without evidence to support it.
2nd. Because the verdict is decidedly and strongly against the weight of evidence.
3rd. Because the verdict is contrary to law and the principles of justice and equity.

Whereupon he prays that these, his grounds for a new trial, be inquired of by the court, and that a new trial be granted him.

Howard Moore, Jr., Attorney for Movant

Read and considered. It is ordered that the State show cause before me, at Waycross, Ga., at 10 o'clock on the 15 day of December 1964 why the foregoing motion should not be granted. It is further ordered that the State be served with a copy of this motion and order; and that this [fol. 30] order act as a supersedeas until the further order of the court.

The 8 day of October 1964.

Ben Hodges, Judge of Superior Court

THE STATE

vs.

ISAAC SIMS

Verdict and judgment for The State

October term, 1964, of Charlton Superior Court.

This defendant having made a motion for a new trial in said case, on the grounds therein stated, and said grounds having been approved by the court, it is ordered by the court that said motion be heard and determined on the 15 day of December, 1964 at Waycross, Ga. 10 o'clock A.M. and that movant may amend said motion at any time before the final hearing.

If for any reason said motion is not heard and determined at the time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon, and upon failure to agree, then at such time and place as the presiding judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that the movant have until the [fol. 31] hearing, whenever it may be, to prepare and present for approval a brief of the evidence in said case, and the presiding judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the clerk's office before the date of the hearing, said brief of evidence may be filed in the clerk's office at any time within ten days after the motion is heard and determined.

This 8 day of October 1964.

Ben Hodges, Judge of Superior Court.

[File endorsement omitted]

Acknowledgment of service (omitted in printing).

[fol. 32] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

OCTOBER TERM, 1964

No. 1488

[Title omitted]

INDICTMENT FOR RAPE

AMENDED MOTION FOR NEW TRIAL—Filed January 15, 1965

Comes now, the movant, ISAAC SIMS, JR., and with leave of this Honorable Court, amends his previously filed skeleton motion for new trial by adding thereto the following special grounds, to-wit:

1.

Because, as movant contends, the Court illegally and erroneously admitted movant's statement, over timely objection and illegally and erroneously overruled movant's timely motion to quash and exclude said statement together with the testimony of Sheriff Robert E. Lee relative to said statement. The evidence, statement, objection thereto, and the ruling of the Court were as follows:

"Robert E. Lee was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Will you state your name for the record?

A. Robert Lee.

Q. What position do you hold in Ware County, if any?

A. Sheriff of Ware County.

Q. Were you sheriff in April, 1963?

A. Yes, sir.

[fol. 33] Q. Sheriff, do you remember the occasion back on April 13th, 1963, when Nola Jean Roberts was raped?

A. Yes, sir.

Q. Sheriff, I will ask you if you had an occasion to see the defendant, Isaac Sims, here before.

A. Yes, I have.

Q. Sheriff, did you see him on the 13th day of April last year—'63?

A. Yes, sir.

Q. About what time of day or night did you see him?

A. Approximately 10:30 P.M.

Q. And where did you see him?

A. In the jail in Ware County.

Q. And whereabouts in the jail?

A. Downstairs in the interview room.

Q. Did you ever see him any other place in the jail except in the interview room?

A. Later upstairs in the third floor later, not that night. It was several days later.

Q. You did see him sometime later up there?

A. Yes.

Q. But I'm talking about on this night.

A. That's the only time.

Q. And when you first saw him on April 13th that night was anybody else in the interview room except you and the defendant Sims?

A. Three other persons.

Q. Who was that, Sheriff?

A. Dudley Jones, Estis Johnson, and B. C. Worley.

[fol. 34] Q. Did the defendant make any statement to you or in your presence?

A. Yes, he did.

Q. Who was the presiding officer there?

A. I was.

Q. Who was in charge?

A. I was.

Q. What were the circumstances surrounding him making that statement?

A. I received a call from Dudley Jones, Deputy Sheriff.

Q. Don't tell what he said. Now, you received a call, and what happened?

A. After going down to the jail I telephoned Sheriff Sikes, and then Isaac Sims was brought downstairs to the interview room, and in the presence of the three others I've named and myself he made a statement.

Q. At whose request did he come down and make the statement?

A. He came down—he made the statement that he wanted to make a statement of what had happened.

Q. And, Sheriff, when the statement was made did you or anyone else promise him anything to make a statement?

A. No, sir. He was advised by me that his statement could be used against him in court, and that before he made a statement he was entitled to an attorney,

Q. Was he induced by you or anybody else to make a statement?

A. Yes, sir, I——

Q. (Interposing) Was he induced by you?

A. I identified myself and the other three officers.

Q. You didn't understand that question.

[fol. 35] The Defendant's Attorney: I think the witness answered it.

The Solicitor General: I asked him if he or anyone else induced him to make a statement.

The Defendant's Attorney: He didn't answer like—the Solicitor wanted him to.

Q. (By the Solicitor General) I will re-ask the question. Sheriff: Was he induced by you or anybody else to make a statement?

A. No, sir.

Q. Was the slightest hope of benefit or reward offered to him to make a statement?

A. No, sir.

Q. Was the remotest fear of injury put to him in any way?

A. No, sir. He made the statement freely and voluntarily.

Q. Did you advise him of his Constitutional rights?

A. Yes. I advised him that before he made a statement he was entitled to an attorney.

Q. Did he say he wanted one or didn't want one?

A. He said he didn't want one.

Q. All right, what else did you advise him?

A. I advised him that the statement he was going to give could be used against him in Court.

Q. Sheriff, was the statement reduced to writing?

A. Yes, it was.

Q. Who took it down?

A. Dudley Jones.

Q. Sheriff, I will hand you Exhibit No. 2 for the State and ask you to examine it. Let me ask you this: At whose direction was the statement made? Who was in charge of it?

[fol. 36] A. I was.

Q. Will you examine Exhibit No. 2 for the State that I just handed you?

A. This is the statement that was taken by Deputy Sheriff Dudley Jones on the night of April 13, 1963, in the presence of myself, Chief Johnson, Dudley Jones, and B. C. Worley.

Q. Was it made under your supervision and control?

A. Yes, sir.

Q. Is that the statement that was made?

A. Yes, sir, this is the statement that was made. It consists of four pages. Isaac Sims signed each page at the bottom.

Q. Will you read that statement to this jury?

A. The Defendant's Attorney: Your Honor, I object and move that the witness' testimony by stricken from the record on the same ground, without repeating it, that I moved to exclude Mr. Dudley's testimony, because the foundation to make that statement admissible has not been laid. I raise the same objection.

The Court: I overrule the objection.

Q. (By the Solicitor General) Go ahead and read it.

The Defendant Attorney: Your Honor, we'd like to have the opportunity to examine this witness before the statement is read into the record.

The Court: All right.

The Solicitor General: Would you like to do it at this time?

The Defendant's Attorney: I believe the rule requires that the jury be excused.

[fol. 37] The Court: All right, let the jury go to the jury room.

(The jury thereupon retired from the courtroom.)

The Solicitor General: I was under the impression that he had already examined Sheriff Lee this morning concerning this statement, and that is a matter of record.

The Court: All right.

The Defendant's Attorney: As Your Honor knows, the

rule has been recently changed by the Supreme Court of the United States, and we did have an opportunity to examine the witness today, and on that basis, your Honor, I withdraw my request that the jury be excused and let him proceed with the direct examination. I don't know whether the procedure being followed at this time satisfies the rule decided by the Supreme Court on June 22nd, 1964, that the Court must make judicial determination whether the statement was made voluntarily before it is read to the jury. We did make an examination today, and I withdraw the request for the jury to be excluded.

The Court: All right, bring the jury back.

(The jury thereupon returned to the jury box.)

Q. (By the Solicitor General) Now, Sheriff, would you read the statement that the defendant made on that occasion —read it to the jury.

A. The date, '4-13-63. 10:30 P.M. I, Isaac Sims, Jr., age twenty-seven, resident of Folkston, Georgia, make the following statement, freely, and voluntarily. I have not been promised anything—I have not been promised anything. I know that this statement can be used against me in court. I Isaac Sims, Jr., on April 13, 1963, was driving Cleo Jackson's 1953 or 54 Bel Air Chevrolet, color brown and white, [fol. 38] about 10 o'clock A.M. I was driving down the St. George highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time. The closer I got to her car I had a feeling to have dealings with this white woman. I took the car I was driving, bumped this lady's car several times. Finally I knocked her car into the ditch. I got out of my car, and as she got out of her car I grabbed her. I pulled her across the road into some bushes. She was wearing pedal pushers, grey looking. She kept fighting me, and I hit her in the face, knocking her down. She kept hollering for help. Then I was afraid someone would hear her so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had a Kotex on. I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car started. It would not crank. So then I realized I was in trouble, and I ran through the woods to

Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me that there was a lot of people and dogs hunting someone. These colored boys went to Mr. Stokes' and told him where I was, at the home of a girl named Marguerite. Mr. Stokes and another white man came and picked me up and carried me to the Sheriff. The pants and shorts I was wearing had blood on them.'

"This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, Ware County, Georgia, and B. C. Worley, Constable 1231st District of Ware County, Georgia.

I have been informed of my legal rights by Sheriff [fol. 39] Robert E. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law.

I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

"Witness: Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, B. C. Worley, Constable."

Q. Who is it signed by, Sheriff? It is signed?

A. Yes, sir, signed by Isaac Sims.

Q. Is that the defendant over here?

A. Yes, sir.

Q. Did you see him sign it?

A. Yes, sir.

The Solicitor General: He's with you.

Cross-examination.

Q. (By the Defendant's Attorney) Now, Sheriff Lee, this statement here says, "I was driving down the St. George highway." Then there is something that is scratched out. "I drove up behind a white woman driving a new looking car, color white."

Is that correct?

A. That's correct.

Q. It says, "I was driving down the St. George Highway." Is that right?

A. That's the statement he made.

Q. And it's all written on your stationery? Is that right?

A. Right.

Q. And there are some words that were crossed out? Is [fol. 40] that right?

A. One word crossed out there was "approx."

Q. And another word is crossed out down there? Is that right?

A. The word crossed out down here is "lady's".

Q. And there's another word that's crossed out, isn't it?

A. Well, that's not a word there.

Q. But it is crossed out, whatever it is?

A. Well, that's not a word.

Q. But it is crossed out, isn't it?

A. Right.

Q. All right. Now, that's page 1, isn't it? Now, the defendant didn't tell Mr. Jones to cross it out, did he?

A. That's how come it crossed out.

Q. He told him to cross it out?

A. It was read back to him.

Q. And the defendant said, "cross it out?"

A. Right.

Q. What about down here where there is no word?

A. Down there?

Q. Down here at the bottom of the page.

A. Well, there wasn't supposed to be a word there.

Q. The defendant didn't tell him to cross out any word that wasn't supposed to be there, did he?

A. Well, I don't know about that.

Q. So, these corrections down here, they are not initialed by the defendant, are they?

A. You notice here—you see this "approx." and "approx" is marked, and "about" out in. He said "about". "Approximately" and "about" mean the same thing. [fol. 41] Either word would have been all right in there, but he used the word "about".

Q. He didn't initial that change, did he?

A. No.

Q. And originally it was put up there "in color," wasn't it, and that was crossed out?

A. Where is that?

Q. See right here. See where that "approx' is crossed out there are two crossed out words.

A. Well, it's stated "1953 or 54 Bel Air Chevrolet, brown and white in color"——

Q. The "color" is crossed out, isn't it?

A. Right. And the "white" is still on there.

Q. But the "color" is crossed out?

A. Right.

Q. Now, when the defendant said that he was at the home, in this statement, of a girl named Marguerite?

A. Right.

Q. Are you sure it wasn't "Margie?"

A. That's the word he gave.

Q. And you are sure that he gave the word "Marguerite?"

A. Right.

Q. And not "Margie?"

(No response)

Q. Now, I notice the statement on the last page, which is the fourth page, isn't it?

A. Right.

Q. And it sayd, "I have read"—and that's crossed out, isn't it?

A. How come that crossed out, he didn't read it, and the words " I have read"—the word "read" is marked out, and [fol. 42] "I have had this statement read to me."

Q. The word "read" was written in there before you found out he couldn't read?

A. Well, that's how come that marked out—because he couldn't read. It had to be read back to him.

Q. I'm asking you a question now——

A. (Interposing) That word would have been in there if he could have read it.

Q. Now, Sheriff Lee, the word "read" is crossed out, isn't it?

A. Right.

Q. You crossed that out after you learned that he couldn't read, didn't you?

A. Well, if he could have read the word would have been left on there. He would have read it instead of having it read back to him.

Q. But it was crossed out after you learned that he couldn't read?

A. I don't know—I still don't know whether he can read or not.

Q. But you know that is crossed out—"I have read?"

A. That is crossed out.

Q. You go along, and it says, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

Now, there are only three pages of statement?

A. There are four pages there.

Q. You include the last page?

A. There are four pages you've got in your hand there.

Q. But the last page only says, "I"——

A. (Interposing) That's part of it.

[fol. 43] Q. All four pages are part of this statement?

A. There are four pages of it.

Q. Was this word "read" stricken out before the rest of the sentence was written out?

A. I just stated a minute ago that if he had read the statement himself that would have stayed in there.

Q. Yes, sir; I understand that. I'm clear on that, now, but what I'm trying to get clear on now was the word "read" stricken out by Mr. Jones before the rest of the sentence was written out.

A. I don't know about that.

Q. Is that why there are two "reads" in the sentence?

A. How is that?

Q. There are two "reads" in the sentence—one is stricken out.

A. Well, if he had been able to read the statement that word would have been in there.

Q. Now, did you strike the word "read" out after the entire statement was written out?

A. I don't recall.

Q. Did you strike it out before or after the defendant signed it?

A. It was all stricken out just like you've got it now whenever he signed it. He signed each page.

Q. So, before this statement was written out completely you knew that he couldn't read?

A. Except what he told me.

Q. And that accounts for the "have read" being stricken out?

A. I still don't know whether he can read or not. I just take his word for it.

Q. You believed him when he said it, didn't you?

A. Just what he told me was put down.

[fol. 44] Q. Now, the substantive part of this statement consists of three pages, doesn't it?

A. That's right.

Q. And the fourth page is only a formal part of the statement? Isn't that right?

A. Right.

Q. And it says on that, "I have had this statement read to me, which consists of four pages, which is a true and correct statement ma by me"

A. There are four pages.

Q. Including this page right here?

A. That's right.

Q. Now, Mr. Sheriff, what time did you call on the defendant to come from the jail?

A. I really don't know.

Q. About what time?

A. Well, if I was to make a guess—I really don't know what time it was.

Q. Was it in the morning or in the afternoon?

A. It was in the afternoon—at night—the first part of the night.

Q. Was it after 6 o'clock?

A. I couldn't say.

Q. Now, let me ask you this, Sheriff Lee: Were you called by telephone?

A. I was either called on my radio or either on the telephone. I don't recall which it was.

Q. Does the radio hook up and connect with your house?

A. How is that?

Q. Does the radio hook up or connect with your house?

[fol. 45] A. No.

Q. If you were called by radio does that mean that you were in your car?

A. Right.

Q. Do you know now whether you were called by radio or called by telephone?

A. I couldn't say.

Q. What's your best recollection?

The Solicitor General: He's already told him he didn't know.

The Court: All right.

Q. (By the Defendant's Attorney) Let me ask you this, Mr. Lee: Is it your testimony that you were called at home or in your car?

A. I didn't say I was called at home and I didn't say I was called in my car. I said I had been called on one of the two.

Q. Do you know which one?

A. I don't know.

Q. Would your testimony be the same if I told you that Mr. Jones, Dudley Jones, testified that he telephoned you at home?

A. Well, if he said he called me at home, If I was at my house when he called me, that's probably correct, because I don't recall it.

Q. Now, do you recall testifying in court, in October, 1963?

A. Yes.

Q. And do you recall being asked this question by Mr. Hayes: "Question: Now, were you called down to your office by one of your officers?" "Answer: Yes, sir, by radio."

A. Well, that could be correct. I just stated by radio or either by telephone.

Q. So, Mr. Jones was in error, then?

[fol. 46] A. I wouldn't say. I will say now like I did a minute ago, that I was called by telephone or either by radio.

Q. Now, prior to that time that you were either called by radio or by telephone did you know anything about this case?

A. Except what little bit I heard on the radio.

Q. You mean on the news radio?

A. On the car radio.

Q. The car radio?

A. Yes.

Q. You mean you received the signal on the car radio?

A. Right.

Q. But, before you came down to the jail house you had some knowledge that this offense had been committed? Is that correct?

A. What little I'd heard on the radio.

Q. And you know that the defendant, Isaac Sims, had been brought to the jail?

A. I knew he was in Ware County jail.

Q. And you got that over the radio?

A. Well, I wouldn't say whether I got that part over the radio or found it out there at the jail.

Q. But you do know that radio signals were being sent by whom?

A. Well, I couldn't say who. There were several officers using the radio. I couldn't tell you which.

Q. Did you learn about this in the afternoon of April 13th or in the evening?

A. It was late in the afternoon.

Q. Was this before 6 o'clock?

A. I couldn't say what time it was.

Q. Did you have any conversation with Sheriff Sikes?

A. Yes, I did.

[fol. 47] Q. Was that conversation prior to the time you went to the jail?

A. I talked with Sheriff Sikes from the jail.

Q. From the jail?

A. Yes.

Q. You hadn't talked with him before that?

(No response)

Q. You talked with Sheriff Sikes before you took the statement?

A. Right.

Q. You knew that Sheriff Sikes had sent the prisoner up to the jail for safe keeping, didn't you?

A. I knew that he was sent up to the Ware County jail. I knew he was in the Ware County jail.

Q. Do you remember testifying here in October, 1963?

A. Yes.

Q. Do you remember this question being asked you: "Why did you have this defendant in your jail, Sheriff?" "Answer: Sheriff sikes sent him up for safe keeping." "Question: For safe keeping?" "Yes".

So, you knew he was in there for safe keeping?

A. That's right. I knew he was in there.

Q. And you were asked another question: "What do you mean by safe keeping, Sheriff?" And your answer was: "Well, usually, when something like this happens it is better for a prisoner to be kept in a different county."

Was that your answer?

A. That's correct.

Q. And the next question was: "For what purpose?" "Answer: Well, I think maybe in this case Sheriff Sikes' jail wasn't sufficient for one reason." And then you were asked: "In what way? Do you know why it wasn't suffi-
[fol. 48] cient?" "Well, I wouldn't know to that extent."

Do you remember being asked that in October, 1963?

"Now do you know, Sheriff, whether or not at the time the prisoner arrived at your jail until this statement was taken whether he was visited by anyone? And your answer was, "Not as I know of."

And you testified earlier that he was not represented by a lawyer, did you?

A. That's correct.

Q. You knew that the sheriff, Mr. Sikes, wasn't looking for anybody else for this offense, didn't you?

The Solicitor: Now, your Honor, I object to the question as being a conclusion. He couldn't possibly know what Mr. Sikes was doing.

The Defendant's Attorney: Well, Your Honor, he talked with Mr. Sikes.

The Court: Well, I think he can ask him if he knew.

Q. (By the Defendant's Attorney) Do you know whether or not Mr. Sikes—Sheriff Sikes—was looking for anyone else?

A. I really don't know.

Q. But you had talked to him prior to taking the statement?

A. Right.

Q. Now, you didn't read the statement back to him yourself, did you?

A. Mr. Jones read it back.

Q. Now, you made no effort prior to the time you took

this statement to bring Isaac Sims before a Justice of the Peace or other magistrate did you?

A. I did not.

Q. You had no warrant for the arrest of the defendant, did you?

[fol. 49] A. I don't recall whether there was a warrant there at the time or not. I wouldn't say whether there was a warrant or there was not.

Q. You had no knowledge of the offense and the manner in which it had been committed other than what you got over the radio?

Is that correct?

A. Just what little I heard over the radio and what Isaac told me in the statement.

Q. So, as the time the statement was taken all of the knowledge you had about the offense was a matter of hearsay? Is that correct?

A. From the statement Isaac gave me I knew more about it than I did before.

Q. All right, then, let me ask you this question: Just prior to the time you took the statement the only knowledge you had about the offense was hearsay?

A. Right.

The Defendant's Attorney: Your Honor, we have terminated the examination, and we move that the statement that was read into the record be quashed, and that the jury be instructed to disregard the statement, the grounds being that it was not made in compliance with the 4th, 5th and 6th Amendments to the United States Constitution as made applicable to the several states by the 14th Amendment thereto, and by virtue of Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945.

We move on constitutional grounds, your Honor, that all testimony relative to the statement and the statement itself be excluded from the evidence and that the jury at this time be instructed to disregard the statement.

[fol. 50] The Court: I will overrule that motion. Go ahead."

Movant avers that the inadmissibility of the statement and the evidence relative thereto is beyond doubt.

2.

Because, as movant contends, the Court illegally and erroneously overruled movant's timely motion to strike the direct testimony of Dudley Jones. The testimony, objection thereto, and the ruling of the Court thereon were as follows:

"Dudley Jones was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) State your name for the record.

A. Dudley Jones.

Q. What position do you hold, if any, Mr. Jones?

A. Deputy Sheriff of Ware County.

Q. Mr. Jones, did you hold that position on the 13th day of April, 1963?

A. I did.

Q. Mr. Jones, were you a deputy sheriff prior to serving in Waycross.

A. I was.

Q. What county were you a deputy sheriff in?

A. Charlton County.

Q. Mr. Jones, do you know the defendant, Isaac Sims, Jr.?

A. I do.

Q. Do you see him sitting in the courtroom?

A. I do.

Q. Will you point at him, please?

[fol. 51] (the witness points)

The Solicitor General: Let the record show that he's pointing at the defendant.

Q. How long have you been knowing Isaac Sims, Jr.?

A. Oh, twelve or thirteen or fourteen years, I guess.

Q. Now, Mr. Jones, did you see Isaac Sims, Jr., on the 13th day of April, 1963?

A. I did.

Q. About what time of the day or night did you see him?

A. Around 6:30 in the afternoon.

Q. Where did you see him?

A. In the Ware County jail in Waycross.

Q. When you saw this defendant, Isaac Sims, Jr., did you say anything to him or did he say anything to you?

A. He spoke to me.

Q. Where was he at the time?

A. He was in a cell on the third floor of the Ware County jail in Waycross.

Q. What did he say to you, if anything?

A. He said, "He, Mr. Dudley, Are you working up here?" I said, "yes".

Q. Now, where was he at that time?

A. He was in a cell on the third floor of the Ware County jail, Waycross.

Q. And what did he say then, if anything? What did you say to him and what did he say to you?

A. I asked him what he what doing up there, and he proceeded to tell me.

Q. Now, before he proceeded to tell you did you promise him anything to tell you anything?

[fol. 52] A. I did not.

Q. Did you threaten him in anyway?

A. I did not.

Q. Was anybody else present?

A. No one.

Q. Was he offered any hope of reward?

A. He was not.

Q. Was he induced by you in any manner to make a statement?

A. No.

Q. Was he in any fear of injury anyway?

A. No.

Q. Was the statement made voluntarily?

A. It was.

Q. What did he tell you then, Mr. Jones?

A. He said he got in trouble with a white woman in Folkston, Georgia.

Q. Did he tell you who it was?

A. No, he didn't tell me that.

Q. Did he tell you what kind of trouble?

A. Yes.

Q. What did he say?

A. He said he raped a white woman in Folkston.

Q. Now, what happened after then? What did you say to him?

A. I asked him if he wanted to make a statement to that effect, and he said he did.

Q. Now, about what time of the day or night was that?

A. Oh, it was probably 6:30. I was putting some prisoner in jail at the time.

Q. Did you suggest who to make a further statement to or what?

A. Well, I asked him did he want to make a statement to [fol. 53] the sheriff in regard to this, and he said he did.

Q. Did you make arrangements for it at his request?

A. I did.

Q. And who was the sheriff of Ware County at that time?

A. Sheriff Robert E. Lee.

Q. Is he still sheriff now?

A. He is.

Q. And did you make that arrangement for Sims that he had requested?

A. I did.

Q. Did you take him before the sheriff to make that arrangement?

A. Yes, sir, he was carried before the sheriff.

Q. About what time was he carried before the sheriff to make a statement?

A. 10:30 the same night.

Q. And where was this?

A. It was in the interview room on the first floor in the Ware County jail.

Q. Is that the place you customarily interview prisoners?

A. Yes, sir.

Q. Now, who was present?

A. Sheriff Robert E. Lee, B. C. Worley, Constable, 1231st District, and Chief Estis Johnson, Ware County police.

Q. Mr. Jones, at that time did he make a statement?

A. He did.

Q. Was it reduced to writing?

A. It was put in writing.

Q. At that time did he make the statement voluntarily?

A. He did.

Q. Did you or anyone else there——

[fol. 54] The Defendant's Attorney: (Interposing) I object to that your Honor. He is leading the witness.

The Court: All right, don't lead the witness.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?

A. No, sir.

The Defendant's Attorney: We move that the answer be stricken. That's leading also.

The Solicitor General: The Code sets out what questions to ask.

The Court: Well, ask him the statutory questions.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?

A. No.

Q. Was he threatened in any way?

A. No, he was not.

Q. Was he promised any hope of reward?

A. No.

Q. Or the remotest fear of injury put to him?

A. No, sir.

Q. Mr. Jones, who was the presiding officer there?

A. Sheriff Robert E. Lee.

Q. Who was in charge?

A. Sheriff Robert E. Lee.

Q. And you said this statement was reduced to writing—now, who reduced it to writing?

A. As he dictated it to me I copied it down.

Q. And when you took it down what happened to the statement then? Did he read it or what happened, if anything?

[fol. 55] A. He told me he could not read, and I read it to him.

Q. And after you read it to him was the statement signed?

A. It was signed.

Q. And when was it signed?

A. Upon completion of it. It started about 10:30, and it took about thirty minutes, maybe, or thirty-five. Somewhere in that neighborhood.

The Solicitor General: I will ask the Court Reporter if he will mark this "Exhibit No. 2" for the State.

(The document referred to was thereupon marked for identification, "State's Exhibit 2").

Q. (By the Solicitor General) Mr. Jones, I hand you Exhibit No. 2 for the State. Would you examine State's Exhibit No. 2? What is that?

A. It is the statement that was given to me by Isaac Sims on 4-13-63 at 10:30 P.M.

Q. Was that statement signed?

A. It is.

Q. Who signed it?

A. Isaac Sims.

Q. Is this Isaac Sims over here, the defendant, who signed it?

A. It is.

Q. Now, who was present when that was signed?

A. Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of the Ware County Police, and B. C. Worley, Constable of the 1231st District, and myself.

Q. And I believe you said Sheriff Lee was in charge?

A. Yes, he was.

Q. And it was turned over to him?

[fol. 56] A. That's right.

The Solicitor General: He's with you.

The Defendant's Attorney: Your Honor, we move to strike the witness' testimony on the ground that the testimony is incompetent, in that it does not support the requirements of the due process of law of the 14th Amendment to the United States Constitution, and of Article 1, Section 3, of the Constitution of the State of Georgia of 1945, in that the Statutes of Georgia—the Code—which permits a witness to testify as to the four or five leading questions there as to whether or not there was any hope or fear or any reward, or the slightest hope of injury or benefit, and that sort of thing, are inadequate to lay the constitutionally required foundation for the introduction of an extra judicial statement made by a defendant who purportedly made such statement while in the custody of police officers. For that reason I move the witness' testimony be stricken.

The Court: I will overrule that motion.

Movant avers that the error or overruling said motion is beyond doubt.

3.

Because, as movant contends, the court erroneously charged the jury as follows:

"I charge you further, gentlemen, that when testimony in the nature of an alleged confession is offered it is for the jury to determine whether or not such alleged confession was, in point of fact, made or not; and if the jury believe there was a confession, then and in that event the following principles of law would govern the jury in determining the weight of such alleged confession:

[fol. 57] All admissions shall be scanned with care, and confessions of guilt shall be received with great caution.

A confession alone, uncorroborated by other evidence, will not justify a conviction.

To make a confession admissible it must have been made freely and voluntarily, without being induced by another by the slightest hope of benefit or the remotest fear of injury.

If the jury should believe that a confession was induced by another by the slightest hope of benefit or the remotest fear of injury, then and in that event, gentlemen, it would be the duty of the jury to disregard that testimony.

The amount of corroboration to a confession which has been freely and voluntarily made to authorize a conviction on such confession is a question for the jury."

Movant contends, that the Court by the above recited portions of said charge illegally and erroneously submitted the issue of voluntariness of the alleged confession for determination by the jury in violation of the Fourth, Fifth, and Sixth Amendments, Constitution of the United States as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment thereto and Article I, Paragraph 3, Constitution of the State of Georgia of 1945.

Moreover, movant contends, that the above recited portion of the Court's charge was, and is, wholly inadequate to have insured a reliable and precise determination of the voluntariness of the alleged confession, including the reso-

lution of disputed facts upon which voluntariness or the lack of voluntariness depended to satisfy the Fourth, Fifth, and Sixth Amendments, Constitution of the United States as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment thereto and Article I, [fol. 58] Paragraph 3, Constitution of the State of Georgia of 1945, in that:

(a) the above recited instructions leave it entirely to the impressionistic determination of the jury whether a voluntary confession was in point of fact made without delineating any constitutionally adequate standards or definitive criteria upon which and by which the jury could resolve said issue;

(b) said instructions set out no constitutionally adequate criteria or definitive standards by which the jury could have reliably determined whether the alleged confession, if made, was or was not "induced by another by the slightest hope of benefit or the remotest fear of injury".

4.

Because, as movant contends, the court erroneously charged the jury as follows;

"And then, gentlemen, in the event you find the defendant guilty you may fix his punishment at not less than so many years, which could not be less than one, and not more than so many years, which could not be more than twenty, just since the minimum is not less than one and the maximum not more than twenty. For illustration, and for illustration only, you could fix his punishment at ten years, or five years, or twenty years, or at one year, or seven years, just any figure between one and twenty years."

Movant contends, that the illustration given by the Court as to the term of imprisonment in the event that the jury found movant guilty but provided that movant be imprisoned prejudices the movant by leading "the jury to believe that it could only fix the term of imprisonment at any figure [fol. 59] between one and twenty years, where in fact and law the jury could fix a minimum and maximum term."

WHEREFORE, movant prays that his additional grounds for his motion for new trial be inquired into by the Court, approved and allowed and that movant be granted a new trial.

Howard Moore, Jr., William H. Alexander, 859½ Hunter Street, N.W., Atlanta, Georgia 30314, Attorneys for Movant.

ACKNOWLEDGEMENT OF SERVICE [omitted in printing]

ORDER

The above and foregoing Amended Motion for New Trial and the several recitals of facts in said grounds thereof are hereby approved and made a part of the record in said case and ordered filed.

This 15 day of January, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 60] [File endorsement omitted]

[fol. 61] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

OCTOBER TERM, 1964.

No. 1488

THE STATE

vs.

ISAAC SIMS, JR.

INDICTMENT FOR RAPE

Transcript of evidence on special pleas and motions—October 7, 1964

PROCEEDINGS

The Court: You may proceed.

COLLOQUY BETWEEN COURT AND COUNSEL

The Solicitor General: Your Honor, we call the case of the State of Georgia versus Isaac Sims, Jr., who is charged with rape. The State of Georgia is ready.

The Defendant's Attorney: Your Honor, the defendant announces ready with special pleas and motions.

The Court: All right.

The Solicitor General: Would you like to join the issue or hear the special pleas first?

The Defendant's Attorney: I would like to hear the special pleas first.

The Court: You may proceed, then.

The Defendant's Attorney: Your Honor, we hand up to the Court several special pleas that we would like to be heard. We serve the Solicitor.

In addition to those, your Honor, we have an oral motion that I would like to make as soon as the Court has examined the pleas.

The Solicitor General: I'm sorry—I didn't hear the last statement.

The Defendant's Attorney: We have an oral motion we

would like to make as soon as the Court has examined the pleas.

Your Honor, the prospective jurors are in the court room and the witnesses are in the court room, and I would like for them to be removed from the court while these matters are being argued.

[fol. 62] The Court: All right, I will do that. Let all the jurors go downstairs.

(People thereupon left the court room.)

The Court: Are all the jurors out now?

The Sheriff: They are all out.

The Court: I believe they are.

The Solicitor General: As a matter of information, are you planning on the motion to change the venue to be argued?

The Defendant's Attorney: Oh, yes.

The Solicitor General: Would you like to make an opening statement as to what your contentions are?

The Defendant's Attorney: Your Honor, I think my contentions are fairly well stated in my motion to change venue, and I need not repeat them.

The Court: All right.

The Defendant's Attorney: And we contend that there is an overbearing atmosphere of hostility toward this defendant in this particular county.

We further contend that the circumstances surrounding the incident are such as to give rise to very strong feeling against the suspected perpetrator of such an offense.

In addition, we contend that the venire of the panel of jurors which has been brought into court to try this case is unreasonably small. As a matter of fact, we allege in our motion that approximately 110 persons were called for prospective service in this case, or for the week of October, rather; and now the number of jurors have been narrowed to approximately 99, which is eleven less than we anticipated.

We allege additionally in our motion that many of [fol. 63] these prospective jurors are related in some fashion, by blood, marriage or by long standing ties of association and friendship with members of the law en-

forcement officers involved in the case and with court officials who would necessarily be involved in the case.

We allege that the prosecutrix, Miss Nola Jean Roberts, is believed to be the daughter of Mrs. Lonnie Roberts, the postmaster out at St. George, and that as postmaster, or postmistress, if you'd rather, she knows most of the people in this county and most of the people in the county know her, and have some reason for knowing about the facts of the case.

We allege that there are only 2,656 persons in the county who are above the age of twenty-one and perhaps eligible for jury service. We address the matter to the sound discretion of the Court as to whether the venue should be changed. In the alternative we ask the Court to take such other steps as would insure this defendant a trial before an impartial jury where there is not likely to be the hostility and the overwhelming emotionalism that there is in this particular court. Further, we think that the motion is very timely and should be very carefully considered so as to protect the rights of this defendant. The Court is familiar with what happened in the last case, in that this defendant was convicted, and he was the first person in this county since 1913 for the offense of rape and sentenced to death. The Court is also aware of the circumstances surrounding the fact that no appeal was taken in this man's case, and Chief Justice Duckworth said this was a denial of his rights; and we think this motion is well founded and that the ends of justice would be better served if this case [fol. 64] should be moved to Ware County or some other county where the Court feels the defendant could receive a fair and impartial trial.

The Court: All right.

The Solicitor General: Your Honor, we would move to dismiss his motion because, in the first place, what he states —the majority of the facts, there just simply isn't anything to it. It's not so.

Now, in his motion, I'm very interested in Paragraph 5 in that it is absolutely false, and counsel knows it's false because he knows the facts. He knows that's not true. I ask that the whole thing be dismissed. Now, we have a party here that lives in one edge of the county, some twenty something miles from Folkston, and we admit they are good

people. There is not outburst of any violence here today. Nobody has been threatened, the atmosphere is peaceful. The lawyers have certainly been treated nice here today, the defendant has been treated nice, and we've had no demonstrations. As a matter of fact, there's no people in general hanging around the court house. It's completely orderly. It's quiet, and I've never been in a court room where the atmosphere, where the attitude, and where the people were more determined to give a man a fair and impartial trial, and for that reason I ask that it be dismissed.

The Defendant's Counsel: The Solicitor says they're fair and impartial. That's something to go into. I ask the Court to take notice of the fact that present in the court room now there are at least seven members of the State Patrol, all of whom are armed, which is routine, and in their uniforms, and there are at least one, two, three, four deputy sheriffs in this county and from Ware County; and, [fol. 65] in addition to that, there are one, two, three deputies who've just been sworn for the purposes of this particular trial in the court room; so we have a total of at least thirteen to sixteen law enforcement officers who are present in the court room, and we think this presents an air of somewhat hostility, not that we mean by that that the law enforcement officers are hostile, but we mean that there may be persons in the community who are hostile, and we ask that the Court take particular notice that the defendant has been housed and lodged in adjoining Ware County prior to the first trial, and he's been there since the reversal until the present time.

The Solicitor General: Your Honor, in reply to that I'd like to state that counsel knows of his own knowledge that a number of these officers that are here present have been summonded to this court as witnesses because he heard me call some of them as witnesses, and counsel himself called several of these officers present as his witnesses to appear in this court. The majority of these officers appear because they have been summonded by me for the State or by counsel for the defendant. They have no choice but to be here. They are not here, all of them, because the Court sent for them, except by summons to appear as witnesses on behalf of the defendant or on behalf of the State, and the Court, I know, will take judicial notice that the officers, with the

exception of some of the State Patrol, are the routine amount of officers that are kept here.

Now, the State Patrol Troopers did bring the defendant here, and they are in here for safety in the court room, although there's no need for any safety. Just the same, they brought him here because it's the policy of the Court [fol. 66] to have officers in the court room to make sure everything is peaceful and quiet, which it is today. It is completely peaceful and quiet, no interruptions, no demonstrations, and no nothing. Everything is absolutely peaceful today.

The Defendant's Counsel: Your Honor, I'd like for the Court to also note something, which is unusual, that most of them are in uniform, and each person in the court room who is a bailiff is wearing arms, and these deputy sheriffs are wearing arms, and we say this is more than just routine, and all the officers in the court room are not called as witnesses. Certainly, they are standing in positions now that suggests they are serving functions other than as witnesses.

The Court: Are you through?

The Solicitor General: Yes, We move that his motion be dismissed.

The Defendant's Attorney: Your Honor, I would like to put up some evidence, if I may. We call to the stand the Solicitor General, Mr. Dewey Hayes.

Dewey Hayes was thereupon called as a witness in behalf of the defendant, and, having been duly sworn, testified as follows:

Direct Examination.

Q. (By the Defendant's Attorney.) Will you state your name, please?

A. Dewey Hayes.

Q. What is your position, Mr. Hayes?

A. Solicitor General of the Waycross Judicial Circuit, which includes Charlton County, Georgia.

Q. How long have you been Solicitor General?

A. Eight years.

[fol. 67] Q. How many counties are in the Waycross Judicial Circuit?

A. Six.

Q. Will you name those counties, please?

A. Charlton County, Ware County, Coffee County, Brantley County, Pierce County and Bacon County.

Q. What is the smallest county in that circuit?

A. Charlton and Brantley together are the two smallest. I don't know what the census is in these two counties.

Q. There are at least four other counties in this circuit that are larger? Is that correct?

A. Yes, there are at least four that are larger.

Q. When you say larger, you have reference to population?

A. Oh, yes. Charlton and Brantley would be the two smallest counties.

Q. Now, you were Solicitor General in 1963?

A. That's correct.

Q. And you were the Solicitor General who presented the indictment in Case No. 1394 to the grand jury? Is that correct?

A. Yes, I represented all of them.

Q. And you were the Solicitor who tried the case of the State of Georgia against Isaac Sims, Indictment 1394? Is that correct?

A. That's correct.

Q. And you were present in the court room—as a matter of fact, you conducted the trial of that case?

A. That's correct, along with Bill McQueen.

Q. Would you state for the record where he is?

A. Mr. McQueen was a very prominent and able attorney in Folkston, Georgia, who is now deceased.

[fol. 68] Q. As a matter of fact, he was the only other attorney in the State—in the county?

A. He was the only other attorney with a full time practice at that time in Charlton County.

Q. There were some other attorneys who practiced here?

A. As I recall, Mr. Carroll Russell had previously practiced in this county, but I believe at that time Mr. Russell had just moved to Blackshear. I think that's correct.

Q. When you refer to Mr. Carroll Russell, you have ref-

erence to the attorney who represented Isaac Sims in the first trial? Is that correct?

A. Well, he is the attorney who represented him. That's correct.

Q. And do you know of your own knowledge and information that a motion for new trial was not filed in that case, don't you? Is that right?

A. I know that I wasn't served with one. I'll answer it that way.

Q. You know that no appeal was taken in that case?

A. Well, yes, I know that, actually.

Q. And that was because no motion for new trial was filed? Is that correct?

A. I don't know. I represent the State and I do not know what the defendant's attorneys did or didn't do, because you know under the law if they file some type motion, whatever they do they do not tell me—they serve me with a copy of it, and I did not receive a copy.

Q. So it is reasonable to conclude that a motion was not filed?

A. Well, it is reasonable to conclude that, yes.

[fol. 69] Q. And you also know that a new attorney was not appointed to appeal the case? Is that right?

A. I do not know that.

Q. You know that no appeal was taken? Is that right?

A. There was no appeal taken to my knowledge. That's right. To my knowledge there was no appeal taken.

Q. And you are aware of the opinion of the Supreme Court of Georgia?

A. Yes.

Q. You know of their holding in that particular case?

A. Their holding was, as I understood it (and I have it lying over there), is that they created a new rule—a new law that had never been used in Georgia that said that the defendant's counsel in a case of this type must appeal, and they say they didn't have any law to go by. In essence, that's what they say. I can read it to you. I've got it over there.

Q. But you know that no appeal was taken and you know the holdings of the Supreme Court.

A. Oh, yes. They say it should have been appealed. In essence that's what they said.

Q. Now, you at no time approached the Court while that case was pending here—the conviction—indication that no appeal had been taken?

A. I do not recall ever discussing it with the judge because, as I said, generally speaking—well, as a matter of law, lawyers have thirty days to file a motion for a new trial, and in a great majority of the cases they will serve me on the thirtieth day. I would say ninety per cent. of my cases are served on me on the thirtieth and last day. In this particular case the thirty days expired without me [fol. 70] having been personally served with a copy of a motion for a new trial.

Q. And you never mentioned that to the Court at all, did you?

A. Now, I do not recall ever discussing it with the Court until possibly after it was over. I had no reason to discuss it with the Court, because, as I said, ordinarily I would not get a motion for a new trial—a copy of it until the twenty-ninth or thirtieth day.

Q. Because you don't recall, it's likely that you never did discuss it with the Court? Is that right?

A. I don't believe I did discuss it with the Court.

Q. And did you write a letter to the Board of Pardons and Parole in this case?

A. I don't know whether I did or not. Have you got a copy of it?

Q. I asked if you remember writing it?

A. I do not remember writing them, but if you have a copy of it I might refresh my memory.

Q. Do you remember having appeared before the Pardon and Parole Board?

A. I did not appear before the Pardon and Parole Board. I'm not going to say that they didn't contact me, but I did not appear before the Pardon and Parole Board or any member of the board. I might have talked to some officer of it, but I have not talked with the board that I recall. I know I have not been to Atlanta to appear before the Pardon and Parole Board, and that's where they have hearings.

Q. But you know that on the sixth day of November, 1963, which was less than thirty days after the conviction

in this case that the Pardon and Parole Board refused to commute sentence, don't you?

[fol. 71] A. No, I don't know that. I don't have any dealings with the Pardon and Parole Board.

Q. You deny that you were served with a copy of their order denying commutation?

A. I wasn't served with a copy. It's possible I could have got a copy in the mail as a routine matter, but I don't recall it.

Q. Did you get a copy in the mail, then?

A. I do not recall it. I wouldn't say I didn't get a copy, but if I did I don't remember it. I don't remember the Pardon and Parole Board ever sending me a copy of anything of that nature.

The Defendant's Attorney: Would you mark this as "Defendant's Exhibit D. 1", please?

(The paper referred to was thereupon marked for identification "Defendant's Exhibit 1".)

Q. Mr. Hayes, I show you a copy of defendant's Exhibit D 1, a certified copy of the order denying commutation in the case, and ask you to examine it.

A. Yes, I've examined it.

Q. Does that refresh your memory?

A. I don't remember it. I don't believe I got a copy of that.

Q. Do you see the certification there?

A. Yes, I see the certification, certifying from the Clerk of the Superior Court of Charlton County that this is a true and correct copy of some paper down in the Clerk's office.

Q. Of the commutation?

A. Yes.

Q. So that is on file in the Clerk's office. Is that correct?

A. Now, I can't tell you what is on file in the Clerk's office. I don't know. You'll have to ask the Clerk about that.

[fol. 72] Q. Well, let me ask you this: This is certified by the Clerk that it is on file in his office? Is that right?

A. That it's on file in his office now, yes. I don't know when it was put there. The only thing that states is that it's on record now.

Q. It's dated the 6th day of November, 1963.

A. Well, I guess you realize I presume that came from Atlanta. If so, it was probably put in the mail that day or the next day and it would probably have taken two or three days to get down here. I don't know.

The Defendant's Attorney: We offer it in evidence, your Honor—Defendant's Exhibit D 1.

The Court: All right.

The Witness: I would like to know what the purpose is. I realize I'm on the stand, but I am still solicitor. It doesn't show a thing in the world. The only thing that paper shows is the Pardon and Parole Board refused to commute his sentence to a life sentence, and that's true. There's no question about that.

The Court: For what purpose do you offer it?

The Defendant's Attorney: If your Honor please, I offer that for the purpose of showing that the Solicitor had knowledge of the fact that no appeal had been taken and the Pardon and Parole Board refused to commute the sentence.

The Solicitor General: Your Honor, I never received a copy or notice or anything else. The only thing it shows, he has a photostatic copy of a paper which was allegedly sent from Atlanta to the Clerk's office here. It doesn't show when it was sent or who sent it or anything about it. [fol. 73] As I explained to him, I don't believe I've ever seen a copy of it before.

The Defendant's Attorney: We'd like to have it in the record, your Honor, as evidence that it was on file in the Clerk's office, and it's record notice and some circumstances of such notice.

The Court: And that the Solicitor had knowledge of it?

The Defendant's Attorney: It's a matter of record, so he has record knowledge of it. It's notice to all the world that it's on file in the Clerk's office.

The Court: All right, I will let it go in.

(The document referred to was thereupon received in evidence.)

The Defendant's Attorney: Would you identify this as Defendant's Exhibit D 2, please?

(The document referred to was thereupon marked for identification "Defendant's Exhibit 2.")

Q. (By the Defendant's Attorney) Were you present in the court room the 9th day of October, 1963, when the Court imposed sentence upon Isaac Sims, Jr., sentencing him to death?

A. Yes, I was present.

Q. And the sentence was to be carried out on November 13, 1963?

A. Yes, I was present—if that is the correct date I was here then.

Q. That's a certified copy of it.

A. All right, I was present.

The Defendant's Attorney: Your Honor, we offer this in evidence.

[fol. 74] Q. (By the Defendant's Attorney) Mr. Solicitor, do you remember appearing in the Supreme Court of Georgia on or about April 13, 1964, if that was the date?

A. I remember appearing when you were present. Let me answer it that way.

Q. Do you remember appearing when the case of Isaac Sims was heard?

A. I appeared in the Sims case.

Q. And do you remember producing to the Supreme Court of Georgia a transcript of the proceedings had at the October, 1963, term?

A. I certainly do remember it, and that's what I said was false in Paragraph 5 that you alleged in there, and I still say it's false, because when I appeared you appeared prior to me and you made the statement that there was not a transcript of it. I followed you and I said there was a transcript of it—that I had a copy of it; that it was filed, was my understanding—I hadn't seen it—it was filed with the Clerk of the Superior Court of Charlton County, Georgia, and that if you would check with the Clerk that you could get a copy of it. I didn't know when it was filed. I had just gotten mine, but I didn't know when it was filed. I knew it was filed. It was available to you, and you could get it. And I told you, furthermore, that if you wanted to that you could get it from the Clerk or you could certainly have a copy of mine. You put in that motion that the judge ordered it, and so on, and that's absolutely false. He did

not. I was not concealed, and he certainly did not order it, and you know that isn't so.

Q. Do you remember appearing at the City Court of Reidsville, Georgia?

A. I do, and at that time I did not have a record of transcript.

[fol. 75] Q. When did you, in fact, see the record of transcript?

A. I do not recall, but it was just before I went to Atlanta, because when I went to Reidsville I did not have a record of it.

Q. You didn't have a record of it?

A. When I went to Reidsville I did not, to the best of my knowledge—I know I didn't.

Q. Had you ordered a record of it?

A. I can't remember prior to that time that I needed one. I wouldn't have ordered a copy of it until I needed it. I don't remember when the first need for it came up, and it would take me a while to get it. When I found out that it looked like we were going to need one then I, of course, asked to get one.

Q. When did you determine that you would need a record of transcript?

A. When did I determine it?

Q. Yes, sir.

A. I determined that when the case was being appealed, when the writ was filed.

Q. You mean the habeas corpus?

A. Yes.

Q. You hadn't made that determination prior to the appeal of the habeas corpus?

A. Prior to that time no appeal had been made to my knowledge. I had no use for the record, and I did not request the record, because I didn't need the record as far as I was personally concerned. I do not ask for a record until I need a record. That's true in all cases.

Q. Now, to whom did you make the request for the record?

A. Who did I make a request to?

Q. Yes.

A. I made the request to the only person you can make [fol. 76] a request to—that's the Court Reporter.

Q. Who is that person?

A. The Court Reporter is Honorable William J. Summerall, Waycross, Georgia.

Q. And you remember at the habeas corpus hearing evidence being introduced from Mr. Summerall as follows: "No motion for a new trial having been filed in the Isaac Sims case tried in Charlton Superior Court, my notes taken in this case have been destroyed. W. J. Summerall, Official Reporter, Charlton County Superior Court, November 23, 1963"?

A. I believe that you put that information in the record, and, as I understand, that's true.

The Defendant's Attorney: Would you mark this as Defendant's Exhibit D 3?

(The document referred to was thereupon marked for identification "Defendant's Exhibit 3".)

Q. Mr. Hayes, do you remember writing me on April 16, 1964?

A. I remember replying to two of your letters, I do not recall the date. I remember replying to your office in response to some question that you asked me on two different occasions. One of those occasions was when you asked to get a copy of the transcript. You wanted to know what it would cost, and so on, and I told you it wouldn't cost you anything—that I couldn't furnish it to you, but you could make your own copy.

Q. Do you remember replying to me in response to a letter that I had written you? Is that correct?

A. On two different occasions that I recall.

Q. Could one of those occasions have been April 13, 1964?

A. Well, I honestly don't remember the date, but I did reply to two of your letters. It could have been on that date. [fol. 77] I just don't remember.

The Defendant's Attorney: Would you mark this, please, Defendant's Exhibit D 4?

(The document referred to was thereupon marked for identification "Defendant's Exhibit 4".)

The Witness: If you will show me a copy of it I'll tell you whether I wrote it or not.

Q. I hand you Defendant's Exhibit D 4, which is my letter directed to you on April 13, 1964.

A. I would presume that I got a letter—I got a similar letter from you to this letter. I can't recall the exact letter, but I would presume this is probably correct.

Q. And in that letter I requested that you send me a copy of the transcript that you exhibited on the oral argument of the case, didn't I?

A. And I sent it to you.

Q. And I show you Defendant's Exhibit D 3, and ask you if that is your letter.

A. Yes, that is where I wrote and told you I would send you a copy and you could make a copy of it and there wouldn't be any charge or anything involved in it, and you'd just have to make your own copy. In essence that's what it says, isn't it?

The Defendant's Attorney: I offer this in evidence now, your Honor.

The Court: What is the purpose of that?

The Solicitor General: Your Honor, I don't see any purpose in it.

The Court: I don't see any purpose in it on a motion to change venue.

[fol. 78] The Solicitor General: He wrote me a letter, and I certainly replied to it, and replying to it the way I thought a Solicitor should, and now he's bringing it up in court.

The Defendant's Attorney: Your Honor, the purpose of the letter is that we made allegations in Paragraph 5 of the motion to change the venue to the effect that the transcript had been made unavailable to us except on the direction of the Chief Justice of the Supreme Court of Georgia, and we offer that as a circumstance to prove the allegations of our Paragraph 5.

The Solicitor General: I object to it unless he can show you the order of the Supreme Court—the Chief Justice. He says that he has that and if he has I want to see it, because I know it isn't so.

The Defendant's Attorney: I'm sure that the Court has practiced before the Supreme Court of Georgia, and the Court knows that minutes are not taken relative to arguments, and this was an order made by the Chief Justice in court.

The Solicitor General: He made the statement to the Court and asked the Court, as I recall, I believe he used the word that he "impound" it, and Chief Justice Duckworth told him he did not have the authority to do it, and so forth —that he could not do that.

Q. (By the Defendant's Attorney) But he did direct you to make it available?

A. No, he didn't direct me at all. I told him—I says "Now, this is my personal transcript. The original is on record down in the Clerk's office in Charlton County, and he can get it there, or, if he would like to—I'm not going to [fol. 79] be forced into giving him anything, but if he'd like to I'd be glad to give him a copy, but he'd have to make his own. I'm not going to furnish him with a copy. He can just make his own." And he wrote me a letter later on and said he would like to have a copy of it and wanted to know what it would cost. I replied and sent him a copy and told him there wouldn't be any charge—that he could make his own and just return mine, and that's what happened.

Q. The transcript was made from Mr. Summerall's notes? Is that correct?

A. No, I don't know what it was made from. Mr. Summerall sent it to me. I understand that his notes were destroyed, but that in addition to keeping notes, in addition to that, as a safety precaution, as I understand this thing, now, he also takes a recording; whereas his notes which you see him taking were destroyed after thirty days—in all cases he destroys those notes, but that he took the tape, which is not part of his personal notes, but which is an extra precaution for him in case something is—well, it's a second precaution for him that he was able to get a transcript from that. That's my understanding. Now, I don't know. The only thing I can tell you is my understanding. Anyway, I got a copy of it from Mr. Bill Summerall. At least, I got something in the mail that said it was from him, and that's all I can tell you.

Q. Did you request that he provide a transcript?

A. I certainly did.

Q. And did he provide you with a transcript?

A. I received a transcript in the mail from him,

Q. And you don't have any knowledge whether or not

the transcript was made from shorthand notes or from the phonographic recording, do you?

[fol. 80] A. The only thing I know, my information was that his pen notes he's taking there were destroyed, and that the tape was in such way that he could make a transcript. I didn't see him take them. I don't know, but I see him now. The only thing, I saw him do was taking them down, and later on I got a copy. I don't know, for I didn't see it.

Q. You don't know whether he made the transcript from his notes—his shorthand notes, that is, or from the phonographic recording?

A. The answer is I did not see him making them. I could not positively know.

Q. Now, you know that Miss Nola Jean Roberts is the prosecutrix in this case and she is the daughter of Mrs. Lonnie Roberts?

A. Yes.

Q. And you know that they live in St. George, don't you?

A. I know they live, according to my understanding, about three miles and a half out in the country from St. George.

Q. On the Lonnie Roberts Road? Is that right?

A. I don't know what road it's on. It's a dirt road about three miles and a half in Charlton County from St. George, Georgia.

Q. And you know that Mrs. Lonnie Roberts is postmaster at St. George?

A. Yes.

Q. About how many people are in this county?

A. I don't know what the census of this county is. I'd have to look at the census. I would say it's around five or six thousand people, but I don't know what the census shows. I would estimate six thousand.

Q. Mr. Hayes, I show you a certified copy of the United States Census for the year 1960. Have you examined the [fol. 81] page for Charlton County? Is that the way you pronounce it—Charlton or Carlton?

A. Charlton.

Q. Thank you.

A. I'm looking for it now. You know, the answer to your

question, if you want to read it in the record what it says I won't object to it—whatever the census shows.

Q. It shows that of the total number of persons of all classes over the age of 21 according to the 1960 census, 2,565.

A. You are talking about adults?

Q. Over twenty-one. Do you know Mr. Lewis Crews?

A. Well, I probably do, but——

Q. No. 2 on the jury list.

A. Did he serve on the case?

Q. No, he's on the jury list for the week of October, 1964—the petit jury.

A. Yes, I know him.

Q. Is he related to State Patrolman Crews?

A. Not to my knowledge.

Q. Do you know Mr. G. W. Crews?

A. Yes.

Q. Is he related to Mr. Lewis Crews?

A. Not that I know of.

Q. Is he related to State Patrolman Crews?

A. Not to my knowledge.

Q. Do you know Mr. Julian Crews?

A. Yes.

Q. Now, is he related to the other two Crews I've mentioned?

A. I don't know. I can't answer the question because I don't know.

[fol. 82] Q. Do you know Mr. Jimmy H. Crews?

A. Yes.

Q. Is he related to Patrolman Crews or the other Crews?

A. I don't know.

Q. Do you know Mr. Willie Crews?

A. Yes.

Q. Is he related to any of the other Crews I've mentioned?

A. I couldn't tell you that.

Q. Do you know Mr. Basil Crews?

A. Yes.

Q. Is he related to any of the other Crews?

A. I just don't know. I don't know what their relationship is. Let me answer you that way.

Q. Are you relatively familiar with most of the people in the county?

A. Yes, but I'm not familiar with their kinship.
Q. You live in this county, don't you?
A. No. I live seventy miles north of here.
Q. Douglas, Georgia?
A. Yes.
Q. Do you know Mr. Jerome Crews?
A. Yes.
Q. Do you know Mr. Earl Crews?
A. Yes, a lot of Crews in this county. All fine people.
Q. Do you know Mr. Herbert M. Crews?
A. Yes.
Q. Do you know whether he's related to any of the other Crews?
A. I don't know.
Q. Do you know whether he's related to State Patrolman Crews?
A. Not to my knowledge. I just don't know. I do not know the relationship among the people. Some of them [fol. 83] are related and some of them are not.
Q. Do you know which ones are related?
A. No, I don't know.
Q. Do you know where they live?
A. They live all over Charlton County. Most of them live in this vicinity. Some of them live in St. George, some at Moniac, some of them at Winokur, and some of them at Race Pond. They live all over this county. I don't believe there's many living in the St. George area, though, if that's what you are referring to.
Q. Do you know Mr. Edgar Woolard?
A. Yes.
Q. Is he related to the Clerk of the Court?
A. Not to my knowledge. He could be.
Q. Could he be related?
A. Could be, as a matter of fact, I think he is.
Q. Do you know Mr. or Mrs. D. E. Sikes?
A. Yes.
Q. Do you know whether she was related to the former Sheriff of the County? Who is deceased?
A. I don't think she was. I don't believe so.
Q. But you're not sure?
A. I'm not sure, no. I wouldn't have any way of having that information.

Q. You are familiar with the people on Charlton juries, aren't you?

A. Yes.

Q. Do you know Mr. Eldon Woolard, Sr.?

A. Yes.

Q. Do you know whether he's related to the Clerk of the Court, Mr. Clyde Woolard?

[fol. 84] A. I don't know. I just don't know. He could be. As a matter of fact, I think he is, but I'm not sure. But I would say that he is. I would say again that I do not know the relationship in this county.

Q. You do know that the jury list for the October, 1964, term consists of some 94 names—99 names, don't you? I'll show you the list.

A. Yes, that would be approximately correct.

Q. You know that the movant, Isaac Sims, Jr., was kept in the Ware County jail, don't you?

A. Yes.

Q. And you know that he was kept there from April 13, 1963, until after he was convicted in October of 1963?

A. I don't know the date, but I know that he's been kept over there a portion of the time. I understood he was kept there some and in Reidsville some.

Q. And the reason why he was kept in the Ware County Jail before the last trial was for safe keeping? Is that right?

A. Now, you made that statement. The reason he was kept there, as I understand it, is because they have better facilities. Now, you wrote me a letter about that and I replied to you. That was in one of those letters I said I wrote you, and in the letter I wrote you this—you wanted to know what was being done for his safety.

Q. I'm talking about from April to November.

A. Anyway, the Ware County jail is a modern jail and it has better facilities. The jail in Charlton County, Georgia, is old, it's dilapidated, and it's really not safe to keep any prisoner in it in my opinion charged with any major crime, because they can get out, and for that reason Ware County jail is a modern jail, has more facilities, and they keep State prisoners there, they keep federal prisoners [fol. 85] there, and we kept him there because it had good facilities.

Q. And it's a jail that they can't readily get into also? Is that right?

A. Well, we're not concerned about getting into, because nobody is going to go in there. We didn't want him to get out.

Q. My question is you can't get in that jail as easily as you can get in the Folkston jail? Is that right?

A. No, you couldn't get in that jail very easily, and you couldn't get out very easily, either. We are not concerned with somebody getting in there, because there was nothing to be concerned about, because nobody was going to bother him.

Q. You know that right after this offense occurred there was a large number of persons who gathered out there on the highway near where it happened, don't you?

A. No, I don't know that, but any time something would happen there would be a lot of curiosity seekers looking around. If you have an automobile wreck out there in ten minutes you'd have several people around looking from a curiosity standpoint.

Q. You do know that a car was burned out there in this area, don't you?

A. No, I don't know that.

Q. You heard testimony about it, didn't you, in Reidsville?

A. I believe I heard one was burned, but I don't remember where it came from. I believe I've heard it.

Q. You know the circumstances surrounding the perpetration of an offense in this county, don't you?

A. Oh, yes.

Q. And wouldn't it be one of the circumstances that you know about?

A. What?

Q. The burning of a car.

[fol. 86] A. As I told you, I believe I have heard that a car burned. Not that somebody burned it, but the car burned.

Q. Do you know that soon after this defendant was taken in custody that he was taken to Dr. Jackson?

A. I know he was taken to Dr. Jackson's office. Yes, I know that.

Q. And you know that he was treated by Dr. Jackson, don't you?

A. No, I don't know that.

Q. You never heard any testimony about it?

A. I don't recall any testimony about Dr. Jackson treating him. I recall testimony about Dr. Jackson seeing him, now. I don't say that he didn't treat him. I don't recall it. I recall testimony that he went to Dr. Jackson's office and Dr. Jackson saw him.

Q. You mean he was taken to Dr. Jackson's office?

A. Yes.

Q. And after that he was taken to the Ware County jail? Is that right?

A. That's correct.

Q. And he was brought back to Folkston April 15th, '63?

A. He was taken to Ware County jail on the Saturday night this happened and he got there around first dark. He was brought back over to Folkston the following Monday, and the following Monday he went before Judge Harvey, a Magistrate—Justice of the Peace, which is a routine thing when a fellow is accused of something—he goes before the magistrate, and that's what happened.

Q. And then he was taken back to the Ware County jail?

A. That's right. Then he was taken back to the Ware County jail because they had better facilities in Ware County to keep this man.

[fol. 87] Q. And then he was kept there until he was convicted?

A. Then he was kept there until the trial, and when we tried him we brought him back to Charlton County and tried him, and he was convicted and sentenced and given the extreme penalty—the chair.

Q. And then the conviction was overturned and he was brought from Reidsville back to Ware County?

A. He was sent to Reidsville—that's correct. His case went to the City Court of Reidsville on a writ. They didn't grant the writ. It went to the Supreme Court, and Chief Duckworth said that the case should have been appealed, and that's about what he said. But that was the only error in the case—he said the case should have been appealed.

Q. And then after that he was brought back to Ware County? Right?

A. Then sometime after that—I don't know when—later on he did come back to Ware County.

Q. And he was held in Ware County until today? Is that right?

A. He stayed in Ware County jail until today. Now, I have discussed this with you. I've told you that if you wanted to see him you could see him any time you got ready, and if you had a minute's trouble, just to call me, and you have never told me that you couldn't see him and that everything wasn't all right.

Q. We agree to that. How far is Waycross from Folkston, Georgia?

A. Waycross is approximately thirty miles. It's in an adjoining county.

Q. Approximately how large is Ware County?

A. Waycross has approximately 26,000 people in it.

[fol. 88] Q. Do you know how large the jury venire is in that county?

A. I do not know.

Q. Do you have any idea?

A. The jury list?

Q. Yes.

A. I don't know. I know the law says you will take not more than two-fifths of the duly qualified citizens, and you will put that number sufficient in there to have a jury. That's all I know.

Q. It is substantially larger than it is in this county?

A. It would be.

Q. When is the next term of court in Ware County?

A. It will be the fourth Monday in October.

Q. This year?

A. This year. Of this month.

Q. And will that be the only term of court in Ware County?

A. Our next term will be in January.

Q. January, 1965?

A. That's right.

Q. In what other counties will this court meet during this year?

A. All right, we will have court here this week. We will go Monday morning—this coming Monday—to Coffee County for a week, and then we will be in Coffee County for another week, which will be two weeks straight in Coffee County. Then we go to Ware County for either one or two

weeks, and there's not a day in between. Court is continuous.

Q. And after Ware County?

A. And then after Ware I believe possibly we have a week between—in there.

Q. A week end—I didn't understand you.

A. I said I think possibly there might be a week between Ware County and Pierce County. Excuse me—we go to Bacon County the third week.

[fol. 89] Q. Bacon?

A. That's in Alma, Georgia, the third Monday—we go to Bacon County the third Monday in November, and then the first Monday in December, as I recall, we go to Pierce County. In other words, it's continuous court almost continuous from now 'til New Years.

Q. Except for the week the break in Ware County, is it Pierce of Bacon County?

A. There will be a few days between Bacon and Ware. There will be possibly one week where we will be getting ready for the other county.

Q. Are any cases scheduled for trial during that week?

A. Yes. Cases are scheduled for trial in all the courts I have named.

Q. Between Ware County and Bacon County a week, you said.

A. We will be preparing that week for Bacon County Court or the Pierce County Court.

Q. You won't actually be trying any cases during that week, will you?

A. We will not be trying cases during those days in between. No, we will be getting ready to go to court—be preparing. Since this is a matter of putting it on record, I might state that we don't have an Assistant Solicitor General, and we don't have any one to prepare these indictments and get them ready. When I come to court the entire Solicitor General's force is there, and I have to have time between courts to prepare indictments and get ready for court.

Q. How large is Bacon County?

A. Bacon County is a little bit larger than this county. I don't know the population. You have that census book there. I have no objection to you reading it out of there.

Q. Okay.

[fol. 90] A. But it is a little larger than Charlton County.

Q. We will stipulate for the record that Bacon County has 4,412 persons over the age of 21. The next County is Coffee County.

A. Coffee County has 21,560, I believe.

Q. The number of persons over 21 years of age in that county is 11,436 according to the 1960 census. And the next county you mentioned was Pierce County. Is that correct?

A. That's right.

Q. In Pierce County, according to the 1960 census there are 5,171 persons over the age of 21. I didn't get the names of the other two counties.

A. Let's see—I gave you Coffee, Ware, Bacon, Brantley, Pierce, and Charlton.

Q. Brantley?

A. Brantley, (spelling), B-r-a-n-t-l-e-y.

Q. And Brantley County, according to the 1960 census, has 3,107 persons over the age of 21. In Ware County, according to the 1960 census, there are approximately 19,221 persons over the age of 21.

The Defendant's Attorney: I wonder if we could shorten this by stipulating that the movant, Isaac Sims, Jr., was taken in custory over at Toledo on April 13th, 1963, by T. W. Walker and Arthur Walker.

The Solicitor General: That is substantially correct.

The Defendant's Attorney. Would you stipulate that?

The Solicitor General: I will stipulate that. That is, in essence, correct. I don't remember which one picked him up, but I remember that it was T. W. or the other boy, one.

[fol. 91] The Defendant's Attorney: And we can stipulate that he was taken by police officers and the sheriff and Mr. Noah Stokes to Dr. Jackson's office?

The Solicitor General: I will stipulate that he went with the law enforcement officers, but I don't remember which ones.

The Defendant's Attorney: To Dr. Jackson's office? Right?

The Solicitor General: Yes.

The Defendant's Attorney: I suppose we could stipulate

that the movant, Isaac Sims, is the first person to be given the chair for rape in this county since 1913?

The Solicitor General: I wouldn't stipulate that, because I don't know one way or the other.

The Defendant's Attorney: Your Honor, we offer into evidence the verified motion for change of venue.

You can come down.

(Witness excused).

The Solicitor General: Your Honor, we ask the Court to dismiss the motion.

OVERRULING OF MOTION TO CHANGE VENUE

The Court: All right, I will overrule the motion to change the venue.

Now, what is next?

COLLOQUY BETWEEN COURT AND COUNSEL

The Defendant's Attorney: We would like to take up the plea in abatement going to the composition of the grand jury.

The Court: All right.

The Defendant's Attorney: Your Honor, on that we'd like to offer certified register of the grand jury list for the year 1954 to the present year.

[fol. 92] The Solicitor General: Now, your Honor, I want to object to any list of any grand jury except the grand jury in which this indictment is based. I have no objection to anything pertaining to the grand jury that has indicted this defendant in this case this time, because I think the Court will take judicial notice that, as a matter of fact, that the jury—grand jury and petit jury—is revised at certain times, and this summer was the time the jury had to be revised, and the grand jury, and that that was done. Therefore, anything pertaining to any grand jury or petit jury prior to the time of this indictment and prior to the time this jury was revised as a matter of law would be immaterial.

The Court: What would be the purpose of it?

The Defendant's Attorney: Your Honor, it brings in the fact of the historical pattern of exclusion of members of the negro race from the grand jury of this county, and we will be able to show that the pattern continued, and that

any representation on the grand jury that indicated this defendant as of yesterday was systematically and arbitrarily included the negroes, rather than a fair and impartial selection of negroes upon the grand jury.

The Solicitor General: If this is going to this jury and this grand jury, to this grand jury that indicted him, and if it is going to this petit jury that is going to sit on the case, then, of course, I have no objection. I think he is entitled to do that, but if he is going to other grand juries prior to the time that it was revised, I don't see how it could have any bearing on the case.

The Defendant's Attorney: Your Honor, we have some authorities relating to the question. Counsel is obligated to show the pattern—historical pattern—of this sort of [fol. 93] practice by putting in evidence relative to past grand juries, and then we have the privilege of showing where the exclusion may have appeared with respect to this particular grand jury.

The Court: Do you have any authority on that?

The Defendant's Attorney: Yes, sir.

The Court: I just don't see where it would have any bearing on it.

The Defendant's Attorney: The first authority that we'd like to cite is the case of Allen versus the State, which was decided by the Court of Appeals of Georgia this year (reading.)

The Solicitor General: (After argument of counsel.) The case he is referring to of Allen versus the State is found in the Georgia Law Reporter on page 56, and in that particular case it doesn't show that the jury panel had been revised. If the jury panel was in the same condition now that it was then I think the decision would be pertinent to it; but we have stated that we intend to show that this jury list has been revised as a matter of law, as the law requires; that it is now impaneled according to Code Section 59-106; that this defendant has been indicted under a proper grand jury that represents a cross section of this county, and that that grand jury presently has on it white people and colored people; that the jury that he is to be tried under are white and colored; I don't know the number of colored jurors we have, but there is a great number

here, and that this grand jury and petit jury are properly impaneled just as the law requires, and that to go any further than that would serve no purpose.

[fol. 94] The Defendant's Attorney: Your Honor, that would be a matter of evidence for the State to come forward and rebut and put on witnesses and other testimony to show that that has been the fact.

The Solicitor General: Since he has raised the issue I plan to call a witness and put him on the stand.

The Court: All right.

The Defendant's Attorney: Your Honor, it is my motion, and I think I have a right to go forward with the evidence that the Court can or cannot rule on.

The Court: I will reserve that ruling now.

The Defendant's Attorney: I'd like to have these identified, please.

(A document was thereupon marked for identification "Defendant's Exhibit 5.")

The Defendant's Attorney: I want to have these identified as "6", "7", "8", "9" and "10".

(The documents referred to were thereupon marked for identification, "Defendant's Exhibit 6", "Defendant's Exhibit 7", "Defendant's Exhibit 8", "Defendant's Exhibit 9", and "Defendant's Exhibit 10".)

The Solicitor General: "While you are searching the record cant we stipulate that this bill of indictment in question that is being considered now was indictment No. 1488, the State of Georgia versus Isaac Sims, Jr., charged with rape, that was returned by the October term, of Charlton County, grand jury, 1964?

The Defendant's Attorney: Would you mark these, Mr. [fol. 95] Reporter?

(The documents referred to were thereupon marked for identification "Defendant's Exhibit 11", "Defendant's Exhibit 12", "Defendant's Exhibit 13", "Defendant's Exhibit 14", "Defendant's Exhibit 15", "Defendant's Exhibit 16", and "Defendant's Exhibit 17".)

The Defendants Attorney: The defendant tenders in evidence at this time Exhibit 5, the grand jury box for August

1, 1960; as Exhibit 6, grand jury box for January 24, 1960; as Exhibit 7, grand jury box of August 4, 1958; as Exhibit 8, the grand jury box of August 6, 1956; as Exhibit 9, grand jury box of August 9, 1954; as Exhibit 10, grand jury box of September 26, 1962; as Exhibit 17, the grand jury box of October 1, 1963.

We tender these into evidence, your Honor, on the plea in abatement concerning the grand jury.

The Solicitor General: That's what I objected to.

The Defendant's Attorney: I'd like to state that they're certified copies.

The Solicitor General: I object to anything that doesn't pertain to this present grand jury and petit jury, for the simple reason that it would serve no purpose.

The Court: When you are talking about "jury box", you mean the list of names in the jury box?

The Defendant's Attorney: The grand jury box of the years I've just called off. I tender these exhibits to show the names of the persons in those boxes.

[fol. 96] The Court: Well, isn't that the same thing I said a while ago I would reserve my ruling on?

The Defendant's Attorney: Yes, sir.

The Court: All right, I still will.

The Defendant's Attorney: Very well, we tender these at this time.

Your Honor, on the challenge to the array, movant tenders into evidence Exhibit 11, certified copy of traverse jury list for August 1, 1958; as Exhibit 12, the movant tenders into evidence the traverse jury box of August 6, 1965; as Exhibit 13, defendant tenders into evidence a traverse jury list for August 9, 1954—a certified copy of the same; as Exhibit 14, defendant tenders into evidence the traverse jury list of August 1, 1960—a certified copy of the same; as Exhibit 15, defendant tenders into evidence the jury list for January 24, 1961—a certified copy of the same; as Exhibit 16, the defendant tenders into evidence copy of jury list of October 1963—a certified copy of the same.

The Solicitor General: I have the same objection.

The Court: I will make the same ruling.

The Defendant's Attorney: Your Honor, we could certainly shorten the proceedings by stipulating—making cer-

tain other stipulations of matters of record that can easily be gotten. Do you have any objections to it?

The Solicitor General: I don't know what you have in mind.

Give me one minute.

The Court: All right.

The Defendant's Attorney: Your Honor, we stipulate that there have been no negroes who served as jury com-
[fol. 97] missioners in Charlton County. Is that correct?

The Solicitor General: Within the last eight years.

The Defendant's Attorney: Within the last eight years.

The Court: All right.

The Defendant's Attorney: And that you have no other knowledge of it.

The Solicitor General: I have no other knowledge one way or the other. The only thing I know about is the last eight years.

The Defendant's Attorney: We further stipulate that the names of the jurors, grand and traverse jury, are taken from the Tax Digest of this county, and that for the three years beginning with 1961 there were a total of 1838 tax payers in Charlton County, and of this number 1471 were white, and 367 were negroes.

For 1962 the total number of tax payers in Charlton County were 1908. Of this number 1488 were white; 420 were negroes.

In the year 1963, according to the Tax Digest from the month of January to December, ending with the 4th of December of this year—January of 1963, rather—there were a total of 1959 tax payers in the county, 1548 were white and 411 were negroes.

The Court: Is that a stipulation between you and counsel?

The Solicitor General: Our records show 410, but we will agree that's right.

The Court: All right.

The Solicitor General: 410 is what our record shows instead of 411, but we will agree to 410.

The Court: All right.

The Defendant's Attorney: As to the population, your
[fol. 98] Honor, we'd like to enter the following stipulation, which is based upon the census of 1960. Right?

The Solicitor General: Yes.

The Defendant's Attorney: The population of Charlton County, based upon the 1960 census, is a follows: In all classes the total is 5,313; male, 2,630; female, 2,683; white, 1,772 males; white females, 1,838; non-white males, 857; females 845; those over 21 in all classes, we have a total of 2,656; male, 1,318; female, 1,388; white male, 965, white female, 963; non-white males, 353; non-white females, 375. All those are over 21 years of age.

For Charlton County those over 65 years of age, the total of all classes is 327; male, 164; female, 163; white male, 131; white female, 119; non-white male, 83; non-white female, 44.

Is that right? That's the end of the stipulation.

The Solicitor General: Have you concluded now? Your Honor, we just agree to stipulate that is what the record shows—I mean what the census would show, without going into it.

The Court: All right.

The Solicitor General: As a matter of fact, I think the Court will take judicial notice of what the census would show, even without a stipulation.

The Defendant's Attorney: Your Honor, we would like to make the further stipulation that the Tax Digest provides one section for white tax payers and another section for negro tax payers, and that they are divided in that manner as of this current year.

Is that right?

The Solicitor General: Yes.

[fol. 99] The Defendant's Attorney: I don't know whether the Court will take judicial notice of this or not—that the defendant is a member of the negro race and is a citizen of the State of Georgia and of the United States.

Do you have any objection to that?

The Solitor General: And the present indictment was returned October 6, 1964. Is that right?

The Solicitor General: Yes.

The Defendant's Attorney: We rest, your Honor.

Your Honor, we introduce the evidence both as to the plea in abatement and as to the challenge to the array.

The Court: All right.

THEO DINKINS was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General.) Will you state your name?
A. Theo Dinkins.
Q. What position do you hold, if any, in the county? What is your business? What profession are you in? You are a banker, aren't you?
A. Banker.
Q. Mr. Dinkins, you are the owner and operator of one of the local banks here in Folkston, Georgia? Is that right?
A. Yes, sir.
Q. Mr. Dinkins, are you presently on the jury commission for selecting grand jurors and petit jurors for Charlton County, Georgia?
A. Yes, sir.
Q. How long have you served on that commission, Mr. Dinkins?
[fol. 100] A. Two years, I believe.
Q. You were on the jury revision commission here during this year, then? Is that correct?
A. Yes, sir.
Q. Now, how many people are on that commission to select the petit jurors and the grand jurors to serve for Charlton County, Georgia?
A. Five.
Q. There are five?
A. Yes, sir.
Q. Mr. Dinkins, has the jury commission revised the list and prepared a list of grand jurors and petit jurors to serve this year?
A. Yes, sir.
Q. When was that done, approximately, Mr. Dinkins?
A. About a month or six weeks ago.
Q. During the summer? Is that right?
A. Yes, sir.
Q. Now, why did you revise the grand jury list, or prepare one, and the petit jury list at that time, Mr. Dinkins?
A. The law requires the jury to be revised every two years. I believe August 1st or within 60 days thereafter.

Q. Did you revise the grand jury list and the petit jury list during the time as prescribed by law?

A. Yes, sir.

Q. And was the sole purpose of revising that list because the law requires you to revise it at that time?

A. Yes, sir.

Q. Now, Mr. Dinkins, where did you obtain the names of those persons that you selected for the petit jury and the grand jury list?

[fol. 101] A. The Tax Digest.

Q. Was that the Tax Digest here in Charlton County, Georgia?

A. Yes, sir.

Q. Mr. Dinkins, did you and the other commissioners go over the entire Tax Digest to obtain those names?

A. Yes, sir.

Q. Did you consider all the people that were duly qualified tax payers in Charlton County?

A. All the names on that Tax Digest, yes, sir.

Q. What basis did you pick them on—the petit jurors and the grand jurors that were selected to serve, Mr. Dinkins?

A. Well, we picked them on being upright, intelligent, law-abiding citizens.

Q. And is that the way you selected all the petit jurors and the grand jurors?

A. Well, we selected the petit jury first, and then from the petit jury list we selected the grand jurors as maybe having more experience—being better experienced, or something like that, from the petit jury list.

Q. Was all your selection based purely on the proposition of trying to obtain intelligent, upright citizens who would make competent jurors? Was that the basis of your selection?

A. Yes, sir.

Q. Was that the basis for the selection of the grand jurors—try to obtain people on the grand jury who were upright and intelligent and who would make competent and honorable grand jurymen?

A. Yes, sir.

Q. On your selection did you (and when I'm talking about you, I mean the commission that you were working with)—

was any consideration given whatsoever on the basis of race, [fol. 102] color, creed, or nationality, or anything else?

A. No. We took all the names from A to Z on the Tax Digest.

Q. And when a name came up on the Tax Digest how did you pick this man? On what basis did you determine that a man was upright and intelligent and would make a good petit juror or grand juror and competent to serve? What basis did you take it on? Did you know them or what?

A. Well, I didn't know all of them, but some member of the jury commission did know all of them—I mean, the ones that I didn't know they did know, and when a name came up if I knew him and considered him to be well and good, why, I said so. If I didn't, it was discussed, and somebody else who did know him would recommend him.

Q. Well, Mr. Dinkins, were all those jurors selected on the basis of being intelligent, upright, and good citizens—was that the basis you selected them on?

A. To the best of our knowledge.

Q. Now, on the tax books there is different colored paper in the tax books? Is that not correct?

A. That's right.

Q. Did you and the commission give any consideration whatsover concerning the paper or whether they were in the front of the book or back of the book or how they were classified?

A. We went through the whole book.

Q. Did you treat everybody just alike?

A. Yes.

Q. Now, when you'd go back to your petit jury and your grand jury did you know of your own knowledge that you had white people?

A. Yes.

Q. Did you know of your own knowledge that you had colored people on it?

[fol. 103] A. Yes, sir.

Q. How did you know that?

A. Some of us knew the persons by their names.

Q. Because you knew them by their names?

A. Right.

Q. Now, Mr. Dinkins, in obtaining this petit jury and grand jury that is now serving for the October term, 1964,

of the grand jury and petit jury, was it for the purpose and business of making a selection of cross section of all the citizens of this county?

A. That's right.

Q. Now, you just testified that you selected the jurors' names from the Tax Digest?

A. Yes.

Q. And that you gave no consideration to race, creed or color, or what kind of paper it was on? That's correct, isn't it?

A. Right.

Q. Now (when you pulled a name—for example, we'll take the name of John Jones—what did you do when you wanted to select John Jones as a good, upright and intelligent citizen you thought would make a good juryman? If you wanted to select Mr. John Jones how would you select him?

A. We'd call his name, John Jones.

Q. Then what would you do?

A. And some member of the board would say, "Okay, put him on," or somebody would say, "Leave him off".

Q. Would you base that on his intelligence and experience and on being a good citizen?

A. Correct.

Q. And if Mr. Jones was put on there what would you do? [fol. 104] What kind of paper would you put him on?

A. We'd put him on the list that our clerk was making up.

Q. And then would his name be put in the box?

A. When we got through, yes. We'd check them up and put them in the box.

Q. Mr. Dinkins, was there any designation on the list or on the jury box and the panel—any designation whatsoever as to white, colored, or other races?

A. None whatever.

Q. Could you look in the jury box in any manner when you pulled a name and tell from the ticket whether or not it was white, colored, or Spaniard, or anything else?

A. Not unless you knew the person the name belonged to.

Q. The only way you could tell, then, whether a person was colored or white when his name was drawn was that

you would have to personally know the person and know whether he was white or colored or not?

A. That's right.

Q. But the paper is the only thing you saw, with no designation?

A. No, sir.

Q. None whatsover?

A. No, sir.

Q. From the jury box you couldn't possibly look at the jury list of the jury box and determine any race, creed, or color, or nationality, or anything else, could you?

A. No.

The Defendant's Attorney: I object to the way you put the question.

Q. (By The Solicitor General) Was all of it handled just alike?

A. Yes.

Q. Everybody was treated just alike?

A. Yes.

[fol. 105] Q. All the papers were designed just alike?

A. Yes.

Q. No marks, no distinction, no nothing?

A. Right.

Q. Now, do you know how many white citizens and colored citizens on the petit jury and grand jury?

A. No.

Q. Do you know there's a good number of white people in the jury box?

A. Yes.

Q. Do you know there's a good number of colored citizens in the box?

A. Yes.

Q. Now, how do you know that?

A. Because I remember the names that I went through.

Q. You know the people?

A. Yes, sir.

Q. And you didn't try to get any percentage any way of colored or white or any other nationality, did you?

A. I don't know how many of each are in there.

Q. And you based it solely on what you thought was up-

right, intelligent citizens who would make good, competent grand jurors or petit jurors? Is that correct?

A. Yes, sir.

Q. And no other way?

A. No, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mr. Dinkins, just to make the record clear, you are a member of the white race, aren't you?

[fol. 106] A. Yes.

Q. And you are a banker? Is that correct?

A. Yes.

Q. What's the name of your bank?

A. Peoples Banking Company.

Q. What position do you hold?

A. President.

Q. How long have you been president?

A. Eight years.

Q. Did you have a position with this bank before that time?

A. No.

Q. Did you have a position with a bank in Charlton County?

A. No.

Q. What were you doing before you were made president?

A. In the timber business. I still am.

Q. What is the name of your timber business?

A. South Georgia Timber Company.

Q. Where was the office of that business located, or where is it located?

A. Here in town.

Q. In Folkston?

A. Yes.

Q. How long have you lived in Folkston, sir?

A. All my life.

Q. And how long is that.

A. Sixty-five years.

Q. And you know most of the people in the county?

A. I know most of them.

Q. Would that be true of the negro and white persons?

A. Yes.

Q. You know most of the persons who have bought property in this county, don't you?

A. I know lots of them.

[fol. 107] Q. Because they have dealings with your bank?

A. Yes.

Q. Would this be true of the negro and white persons of the county?

A. Yes.

Q. Is there any other bank in town besides your bank?

A. Yes.

Q. What's the name of that bank?

A. Citizens Bank.

Q. Is that the only other bank?

A. Yes.

Q. Which of the two banks is largest?

A. Citizens Bank.

Q. That's not your bank, is it?

A. No.

Q. Now, you testified that you selected the names from the Tax Digest and you didn't pay any attention to the color of the paper? Is that right?

A. Right.

Q. And the Tax Digest is kept one section for white and one section for colored? Is that right?

A. Right.

Q. And the section for the colored is divided from the section for white?

A. Yes.

Q. And it says on there "Negro tax payers," doesn't it?

A. I don't remember that. One is white paper and one is yellow paper. I remember that.

Q. And in the section for white tax payers the paper is white, isn't it?

A. Yes.

Q. And it says, "White tax payers"? Right?

[fol. 108] A. I don't remember that it does.

Q. But you do know that it's divided in that fashion?

A. Right.

Q. And the yellow and white paper separates the negro and white tax payers?

A. Right.

Q. Now, you testified that there are five members of the jury commission? Is that right?

A. Yes. Five and the clerk.

Q. Who is the clerk? The Clerk of the Superior Court?

A. Yes, he was our clerk.

Q. Could you identify for the record, sir, those five jury commissioners?

A. Mr. Herbert McDuffie, Mr. E. D. Stapleton, Mr. Richard Hodges, Mr. J. J. Conner, and myself.

Q. What is the occupation of the persons you have named?

A. Mr. Hodges has a chicken farm and farmer and timber grower. Mr. Stapleton is a druggist. Mr. McDuffie is a farmer, and Mr. Conner is a merchant. Is that all.

Q. That would make five including you.

A. Yes.

Q. And who is the clerk of the jury commission?

A. Clyde Woolard.

Q. He is also Clerk of the Superior Court?

A. Yes.

Q. Now, each of these persons you have named here as jury commissioners are members of the white race? Is that right?

A. That's right.

Q. You said "right"?

A. Yes.

[fol. 109] Q. Now, do you know how long Mr. Hodges has lived in this county?

A. All his life.

Q. Is that true of Mr. Stapleton and Mr. McDuffie and Mr. Conner?

A. Mr. Conner was raised in Callahan, Florida, I believe, but he's been here, I guess—oh, I don't know—I guess ten or fifteen years. Mr. Stapleton moved here in the teens, I believe.

Q. You mean in his teens?

A. No, in 1918, or somewhere along there.

Q. So he's been living in the county roughly about——

A. Forty some odd years.

Q. Now, Callahan, Florida, is about what—ten or twelve miles from here?

A. About twenty-two miles.

Q. It's right across the State line?

A. Yes.

Q. Do you have any knowledge whether or not Mr. Stapleton and Mr. McDuffie and Mr. Hodges and Mr. Conner are familiar with the people in this county?

A. Yes, they are.

Q. Would you say they are well acquainted with the people of this county?

A. I would think so. Mr. Stapleton and Mr. Conner would probably be more familiar with more people, probably, because of the nature of their business.

Q. Now, I want to take your attention back to the Tax Digest—the first thing that you do to select traverse and [fol. 110] grand jurors is to go to the Tax Digest? Is that correct?

A. Yes.

Q. And you go through the white section? Is that correct?

A. Yes.

Q. And you take names from the white section?

A. Yes.

Q. And then you go to the colored section?

A. Right.

Q. And you take names from the colored section?

A. Yes.

Q. Is that right?

A. Yes.

Q. And you put the names that were taken on a list? Is that right?

A. Yes.

Q. And one list is known as the grand jury list and the other list is known as the traverse jury list? Is that right?

A. Yes.

Q. Now, in selecting a person to serve on the grand jury what things do you consider when you make your determination that they are the most intelligent and upright citizens in the county?

A. You first select a petit jury list, and from the petit jury list you take the grand jury list, and you pick from the petit jury list the ones that you think have more experience and better qualified and put them in this other box as grand jurors.

Q. What are the things that you determine as making one

better qualified so that that person can serve as a grand juror?

A. Maybe a little higher intelligence or education or more business experience, or from having known them and know [fol. 111] that they are a higher type person than some of the others.

Q. Now, Mr. Dinkins, the first five years that you served as jury commissioner there were no negroes who were selected as grand jurors? Is that correct?

The Solicitor General: I believe he testified he served two years.

The Witness: I was appointed in '62, I believe.

The Defendant's Attorney: Strike that.

Q. Then, since 1962 there have been three revisions of the grand jury list? Is that correct?

A. There have been two—every two years.

Q. It was revised in 1963 by order of the Court? Is that correct?

A. I don't remember.

Q. That was a special revision for 1963, wasn't it?

A. You might be right. I just don't remember. I don't remember when it was revised. You have the record there.

Q. Well, how many times have you participated in revising the grand and petit box?

A. Twice.

Q. The first list that you assisted in revising there were no negroes on that list? Is that correct?

A. No, I think there were negroes on that.

Q. On the first list that you revised?

A. Yes, I think so.

Q. On the present list that you have revised there is only one negro on the grand jury list? Is that correct?

A. I don't know.

Q. If I told you that his name was Mr. Duncan, would that refresh your memory?

[fol. 112] A. I know that Ed Duncan is on there, but I couldn't tell you how many names are on there, because I don't remember, but there would be more than that in there, I'm sure.

Q. I'm talking about the grand jury list.

A. I am, too.

Q. I show you a copy—I show you the indictment——

The Solicitor General: (Interposing) I want to object to him doing this. I think the witness is confused. He has asked him about how many names are in the entire grand jury box, and he is fixing to show him the ones that are on the present grand jury. Now, we will stipulate that there is only one on the present grand jury.

The Witness: I do know that there is only one on the present grand jury, but I thought he was asking me how many were on the grand jury list that we prepared, and I don't know how many are on there.

Q. (By the Solicitor General) Your answer is referring to how many are in the box? Is that right?

A. Yes, There's only one on that list. No, in the box I don't know how many there are.

Q. (By the Defendant's Attorney) Do you know positively how many negroes are on the grand jury?

A. That's in session today?

Q. No, the grand jury list.

A. I do not.

Q. But you do know that there are some negroes on the grand jury?

A. Yes, I do.

Q. But you don't know how many?

A. I don't know how many.

[fol. 113] Q. Now, after you get the grand jury list you then make up the grand jury box? Is that correct?

A. Well, you have the box there with a lock on it, and you unlock the box and take all the names out of there and throw them in the waste basket and put the new names in.

Q. And these are the names that are taken from the Tax Digest? Is that right?

A. Yes.

Q. And then they're put in the box? Is that correct?

A. Yes.

Q. And then you draw from the box the names of grand jurors? Is that correct?

A. I don't see the box any more.

Q. Do you know who draws from the box?

A. I believe the judge.

Q. But when you take the names from the Tax Digest

and place them on the jury list this is when you make a determination as to the ones best qualified or most qualified? Is that correct?

A. Yes.

Q. Do you remember making any investigation of the persons you put on the grand jury list?

A. Not outside. We usually—someone on the jury commission—you see, the five that are on there are from different areas of the county, and they usually know—if I don't know, some of the other commissioners do know. Some one usually knows and they tell us what they know.

Q. How do you go about selecting a negro as the most intelligent or right person to serve?

A. The same way we do a white.

Q. What do you do?

[fol. 114] A. If I know him I know whether he's been a murderer or a thief, or whether he's considered in my opinion to be honest and upright.

Q. Do you ever go around and ask anybody about him?

A. No.

Q. It is based upon you——

A. Based upon my opinion and the opinion of the others.

Q. Do you have many contacts with the negro citizens of this county?

A. Yes.

Q. And so you know them quite well? Is that right

A. Most of them I do.

The Defendant's Attorney: Mark this, please.

(The document referred to was thereupon marked for identification "Defendant's Exhibit 18".)

Q. Mr. Dinkins, I have in my hand Defendant's Exhibit D 18, which is the petit jury list revised by the jury commissioners on September 26, 1962—a certified copy of the same—and I will ask you do you know M. D. Thrift?

A. Yes.

Q. Do you know whether he is a negro or white person?

A. Yes.

Q. What is he?

A. White.

Q. Do you know Henry Lee Bailey?

A. Yes.

Q. Is that a white person or negro?
A. Negro.
Q. Do you know Edd Brunson?
A. Yes.
Q. Is he a negro person or white person?
A. Negro.
[fol. 115] Q. Do you know Peter J. Fulton?
A. Yes.
Q. Is he a negro person or white person?
A. Negro.
Q. Do you know Edd Brown?
A. Yes.
Q. Is he a negro or white person?
A. A negro.
Q. Do you know Ruby R. Raulerson?
A. No.
Q. You don't know that person?
A. No.
Q. I hand you Defendant's Exhibit D 18, and ask you to examine it and determine whether or not you find any persons who are named thereon of the negro race whom I have not already named, whose names appear at the end of the list.
A. How far from the end of the list?
Q. Pardon?
A. How far from the end of the list?
Q. Take the last four or five numbers, which is 356.
A. I've got 274.
Q. Start at 357.
A. 357 is a negro. Harry Everett is a negro. Peter Fulton is a negro. Edd Brown is a negro. Ruby R. Raulerson I do not know.
Q. But those last names of negro persons appear on the end of the list?
A. Yes.
Q. Do you find any other negro persons whom you know on that list?
[fol. 116] A. I haven't gone over it.

The Solicitor General: Your Honor, we will make our objection to that the same as the other as to going into a jury list that doesn't have anything to do with the present grand jury or petit jury, and wouldn't have anything to

do with this particular grand jury or petit jury. In other words, it has nothing to do with it—this defendant's right to be indicted by a grand jury and be tried by a petit jury that represents a cross section of this county. We say under the law he is entitled to a cross section of petit jurors and grand jurors, but that could only pertain to this petit jury and this grand jury—not some that used to be.

The Court: I am of the opinion that would be right.

The Defendant's Attorney: Your Honor, we tender that into evidence, and we tender it on the question of the existence of the pattern of discrimination.

The Court: Aren't you concerned with the manner in which the present jury is constituted?

The Defendant's Attorney: Yes, sir.

The Court: All right.

The Defendant's Attorney: Mark this, please.

(The document referred to was thereupon marked for identification "Defendant's Exhibit 19".)

Q. I show you Defendant's Exhibit D 19, which is a list of jurors for the week of October, 1964—October term, Superior Court of Charlton County—and ask you to examine this list.

A. What shall I be looking for?

Q. Do you see any persons on there known to you to be members of the negro race?

A. Yes.

[fol. 117] Q. Will you state their names and their numbers?

A. Troy Robinson.

Q. What number is that?

A. 20.

Q. 20.

A. 20.

Q. Do you see any others there?

A. Sol Houston.

Q. What number is he?

A. 12.

Q. Do you see any others?

A. There might be some here that I don't know. I probably didn't know all of them.

Q. Would you look through the list?

A. Norris Mitchell.
Q. What number is he?
A. 23. James Bolden—6.
Q. (By the Solicitor General) What number was that?
A. 6. Robert Everett—14. That's the ones that I recognize as being negroes.
Q. (By the Defendant's Attorney) Those are the only ones that you recognize on the list?

A. Yes.

The Defendant's Attorney: We offer into evidence as Defendant's Exhibit 19 the jury list of October, 1964.
[fol. 118] The Solicitor General: We have no object to the present jury list.
The Court: All right, it is admitted without objection.

(The document referred to was thereupon received in evidence.)

The Solicitor General: Have you finished with the witness?
The Defendant's Attorney: That's all.

Redirect examination.

Q. (By the Solicitor General) Now, Mr. Dinkins, you have gone through this list and you have picked out various names at random that included numbers all the way through this jury list, did you not, of colored and white people?
A. Yes.
Q. There is no way that you can look at this list and tell whether a person is colored or white, is there, except the fact that you know the person?
A. Right.
Q. And the only way you can tell they are colored is you just have to know that name—know that person?
A. Yes.
Q. And they are not in the front part or in the back part or any special place in the list, are they?
A. They are scattered through the list.
Q. They are scattered all the way through the list?
A. Yes.
Q. And with no designation whatsoever?

A. None that I can see.

Q. Now, Mr. Dinkins, you have named off a number of people that you said were colored—isn't it very possible and [fol. 119] probable that there are other colored people throughout this list that you just don't recognize the names?

A. Yes. I don't know all the colored people in the county. I know a good many of them, but I don't know all of them.

Q. So, it's not your testimony that that's all there are, but that's just some of the people on there who are colored?

A. Yes.

The Solicitor General: That's all.

Recross examination.

Q. (By the Defendant's Attorney) Now, Mr. Dinkins, you were able to identify the ones who are on there by their names as negroes? Is that co. ect?

A. I didn't say that. I said that was the ones that I recognized as being negroes.

Q. You recognized five persons whose names appear here?

A. I didn't count them.

Q. Who are on the jury list? Is that correct?

A. I suppose there were five, but I didn't count them.

Q. And you were able to recognize them by name? Is that right?

A. Yes, the ones I did recognize.

Q. Now, you participated as a jury commissioner in compiling this jury list, didn't you?

A. Yes.

Q. And you went through the Tax Digest and selected these names? Is that right?

A. Yes. I helped select them.

Q. You knew at the time you selected the names from the Tax Digest which persons were negro and which persons were white, didn't you?

A. Yes.

Q. Because the names were separate?

[fol. 120] A. Because they were separate.

The Defendant's Attorney: That's all.

Redirect examination.

Q. (By the Solicitor General) I believe you've already testified, Mr. Dinkins, that you didn't give that any consideration whatsoever?

A. We did not.

Recross examination.

Q. (By the Defendant's Attorney) You said you gave that no consideration—you mean none other than the fact that you went through from the white section into the colored section?

A. We started at the A's in the first of the book and went through Z's in the white, and then went from A to Z in the colored.

The Defendant's Attorney: That's all.

The Solicitor General: Come down.

(Witness excused)

Colloquy Between Court and Counsel

The Solicitor General: Your Honor, at this time we will renew the motion that all motions be dismissed.

The Defendant's Attorney: Your Honor, I want to put on some rebuttal testimony. I would like to call some witnesses.

The Court: All right, call them.

The Defendant's Attorney: I don't believe they are here. I would like to call Troy Robinson, Norris Mitchell, Sol Houston.

The Court: Are they a member of this jury at this particular term? Is Sol Houston a member of this jury?

The Defendant's Attorney: Yes, sir.

The Court: Well, you came up here and agreed—you said you thought you wouldn't be through until 2 o'clock and I've dismissed all those jurors until 2 o'clock.

The Defendant's Attorney: I wonder if we could put them on at 2.

[fol. 121] The Court: I reckon so. I had no idea that you were going to call them as witnesses. But that's all right. Call them.

(The defendant's attorney thereupon called some names and received no replies.)

The Solicitor General: At this time we urge the Court to dismiss all the motions that pertain to venue, and all the motions he has made.

The Court: You have asked that all the motions be sustained—here is a motion to suppress illegal evidence. Are you talking about that, too?

The Defendant's Attorney: I haven't submitted any evidence on that.

The Court: That's what I thought. You said all of them, but you mean just the motion to change the venue, the plea in abatement, and a second plea in abatement, and the challenge to the array? Is that what you meant?

The Defendant's Attorney: Yes, sir.

The Court: All right.

The Solicitor General: What is the other one?

The Court: Here is a motion to suppress illegally obtained evidence.

The Solicitor General: I don't know anything about any illegally obtained evidence.

The Court: Now, that motion we haven't gone into, so we are not considering that motion yet. Is that right?

The Defendant's Attorney: To suppress illegal evidence?

The Court: Yes.

The Defendant's Attorney: No, sir; we haven't considered that yet.

Overruling of Challenge to Array and Pleas in Abatement

The Court: All right, I will overrule the challenge to [fol. 122] the array, the plea in abatement—two pleas in abatement.

The Defendant's Attorney: Your Honor, I want to offer some evidence on that—I have a certified copy of the record which shows the record of the execution of negro and white persons in the State of Georgia from 1930 to 1960 for the offense of rape, and I'd like to introduce it at this time. It's under the seal of the Justice Department, and it is certified.

The Court: All right, show it to the Solicitor.

The Solicitor General: Your Honor, I don't see what materiality it would have to show how many people have been electrocuted. That's all this purports to show, isn't it?

The Defendant's Attorney: Could we stipulate that since 1930 58 negroes have been electrocuted for the offense of rape in the State of Georgia and 3 white persons?

The Solicitor General: No, I wouldn't stipulate that. I don't know whether it's true or not, and I object to it because it has no bearing on this case.

The Defendant's Attorney: We'd like to introduce it.

The Court: For what purpose?

The Defendant's Attorney: For the purpose of showing the number of negroes who have been electrocuted for the offense of rape in this State since 1930.

The Court: Well, what is the purpose of it?

The Defendant's Attorney: We say that capital punishment has been discriminatorily applied, and that it is shown by the statistics of the number of persons who have been electrocuted.

The Solicitor General: Your Honor, before that would be admissible they would have to show that there are other similar rape cases and what their punishment was, and so on and so forth. All this record goes to show is that these [fol. 123] people he's been talking about have been electrocuted, these people are the only ones who committed rape cases in this State. White people might not have committed any rape in this county.

The Defendant's Attorney: That was in the State.

The Soliticitor General: Well, according to the record, no other white people might have committed rape in this State.

The Defendant's Attorney: We have the record here.

The Court: Well, I don't see what bearing it would have.

The Defendant's Attorney: Your Honor, there is an allegation in our plea in abatement that Statute 1302, Title 26, has been discriminatorily applied, and we allege specifically that since 1930 58 negroes and 3 white persons have been executed for the crime of rape, and we'd like to put this in to prove that allegation.

The Solicitor General: Your Honor, I don't understand how he knows that he's going to get the chair this time. Unless he gets the chair this time then it couldn't be relevant.

The Court: I just don't see where it would be material on a motion of this nature.

The Defendant's Attorney: Your Honor, it's one of the allegations of the pleadings.

The Court: Well, I'm going to rule it out, anyway.

The Defendant's Attorney: Your Honor, we offer into evidence a certified copy of the Justice Department report showing—known as "Executions 1962", published in April, 1963. We offer it for the purpose of showing the number of negroes executed in Georgia since 1930 and the number of white persons who have been executed, and I'd like to have it marked as part of the record in the case.

[fol. 124] The Solicitor General: I object to it on the ground that it is irrelevant and immaterial. It has no bearing on this case one way or the other.

The Court: All right.

(The document referred to was thereupon marked for identification "Defendant's Exhibit 20".)

The Defendant's Attorney: We have a motion to suppress illegal evidence.

The Court: You have made a challenge to the array, plea in abatement, and a second plea in abatement, and a motion for change of venue. Now, we have disposed of those four, now?

The Defendant's Attorney: Yes, sir.

The Court: I will overrule the motions. All right, what is next?

The Defendant's Attorney: A motion to suppress illegally obtained evidence. Movant, Isaac Sims, Jr., claims in his motion that a confession gotten from him on April 13, 1963, violates his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945, and the facts are specifically set out in the motion itself.

Shall we proceed, your Honor?

The Court: Yes, go ahead.

ROBERT E. LEE was thereupon called as a witness in behalf of the defendant, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Defendant's Attorney) Will you state your [fol. 125] name for the record.

A. Robert Lee.

Q. Mr. Lee, what's your occupation?

A. Sheriff of Ware County, Georgia.

Q. How long have you been Sheriff of Ware County, Georgia?

A. Eight years.

Q. What are your duties as sheriff of the county?

A. Well, I'm chief law enforcement officer of Ware County.

Q. How long have you lived in Ware County?

A. All of my life.

Q. Approximately how many persons do you have employed by you as deputy sheriffs?

A. Four.

Q. Will you state their names, please?

A. Dudley Jones, Tommy Rouse, George Roberts, and Edgar Hersey.

Q. I direct your attention to April 13, 1963—do you recall the defendant Isaac Sims being brought to the Ware County jail?

A. Yes.

Q. Do you know under what circumstances he was brought there?

A. I wasn't present when he was brought in.

Q. When is the first occasion that you saw him after he was brought to your jail?

A. The early part of the night on the 13th.

Q. You say early part of the night—approximately what time of night would that be?

A. In the neighborhood of 10:30, P. M.

Q. About 10:30, P. M.?

A. Yes.

Q. Where was he at the time that you saw him?

[fol. 126] A. In the interview room downstairs in the Ware County jail.

Q. When you say downstairs in the jail, will you describe the number of floors you have in the jail?

A. Three floors.

Q. Are the prisoners kept upstairs?

A. Yes.

Q. And you have one section for keeping colored prisoners and another section for keeping white prisoners?

A. Right.

Q. And negro males are kept on the third floor? Is that right?

A. Yes.

Q. And white females are kept on the second floor, I believe? Is that right?

A. How is that, now?

Q. White females are kept on the second floor?

A. First floor.

Q. First floor?

A. Yes.

Q. Now, who is kept on the second floor?

A. White males.

Q. And the defendant, being a negro, was on the third floor?

A. Right.

Q. And when you arrived was he in the sheriff's office?

A. He was in the jail.

Q. In your office?

A. Upstairs. He was on the third floor.

Q. He was upstairs on the third floor? Is that right?

A. Yes.

Q. Did you ask that he be brought downstairs?

A. One of the deputies told me that he wanted to talk to me.

Q. And what happened then?

[fol. 127] A. I called Sheriff Sikes. Sheriff Sikes was the sheriff of this county—Charlton County—at that time. I talked with him, and after talking with Sheriff Sikes Isaac was brought downstairs in the interview room. I identified myself to him, told him I was sheriff of Ware County, and I identified the three other officers who were present, told him their names and their positions, and I advised him of his rights—that any statement he made could be used against him in court; that he was entitled to an attorney.

Q. Let me ask you this question: Will you describe the sheriff's office?

A. Have you been to the jail of Ware County?

Q. Yes, sir; but I'd like to ask you.

A. As you enter the jail there's a big room to the left where the jailer's office is in a big room to the left. There's where I talked with him.

Q. Is that to the east or west end of the jail?

A. How is that?

Q. Is that to the east or west end of the jail?

A. Well, that would be as you enter from the north. There's not but one entrance to the jail.

Q. A north entrance?

A. Right. As you enter the jail there are two small rooms and a large room to the left.

Q. And the interview room is the large room?

A. That's right.

Q. Will you describe that room?

A. The size or what was in the room?

Q. Yes, sir; the size and what was in the room.

A. I'd say the room was approximately 14 by 16. Something like that.

Q. And what was in the room?

[fol. 128] A. Well, the jailer has got a three-quarter bed in there and desk and chairs and bath room.

Q. Lights?

A. Of course there were lights in there.

Q. And you say that there was at least three other persons there other than yourself? Is that correct?

A. That's right.

Q. Did any of them have on uniforms?

A. Yes, they did.

Q. Were they wearing weapons?

A. I couldn't recall whether they did have them on or not.

Q. Did you have any weapon? Did you have any on?

A. No.

Q. And all the persons who were in the room were members of the white race except the defendant? Is that right?

A. Yes.

Q. Would you describe his condition at that time?

A. Well, he was normal.

Q. When you say he was normal what do you mean?

A. Well, I mean—re-ask me that question.

Q. I say when you say he was normal what do you mean?

A. Well, I couldn't tell whether anything ws wrong with him or not. When I say normal, he was a normal man.

Q. Let me ask you this question; How was he dressed?

A. I don't recall what kind of clothes he had on.

Q. Do you recall as to his face?

A. Yes.

Q. Did he have any scars or bruises on his face?

A. No, he didn't.

Q. Did he have any stitches over his eye?

A. How is that?

[fol. 129] Q. Did he have any stitches over his eye?

A. If he did I didn't see them.

Q. Did he have on white pants?

A. I don't recall.

Q. Did he have any blood on his shirt?

A. Not as I could tell.

Q. But you don't deny that he could have had?

A. Well, I think that if he was wearing white pants and got blood on there or a white shirt I would recall it.

Q. Now, at the time you brought Isaac downstairs to the interview room you weren't looking for anyone else for this offense, were you?

A. No.

Q. And you had talked to the sheriff of Charlton County, Mr. Sikes, and you knew he wasn't looking for anyone else, didn't you?

A. Right?

Q. Now, you say that you advised the defendant of his rights—exactly what did you say to him?

A. Well, I identified myself to him and told him I was the sheriff of Ware County. I didn't know. I didn't know whether he was from Charlton County or Ware County or where he was from until he told me Charlton County was his home; and I told him he was entitled to an attorney.

Q. Let me ask you a question there: Did you ask him if he had any money or anything to call an attorney?

A. Well, let me put it in these words: I advised him that any statement that he made could be used against him in court; that before he made a statement he was entitled

to an attorney if he wanted one; and he made the statement that he didn't want an attorney; that he wanted to tell what happened.

[fol. 130] Q. Did you tell him what it meant to have an attorney?

A. Well, I think after I advised him, he being a normal man, after he had advice from me that any statement he made could be used against him in court, and that he was entitled to an attorney, and if he told me that he wanted one, well, I would have seen that he got one.

Q. You assumed that if he were a normal man he would have understood what you said? Is that correct?

A. Yes, and in talking to him he was a normal man.

Q. That's your opinion?

A. Well, from my talking with him that's what I would say.

Q. But you didn't make any effort to get him an attorney, did you?

A. He didn't ask me for one.

Q. And you didn't make any effort to get him an attorney?

A. No.

Q. Did you offer him the use of a telephone?

A. It's not my place to run out and get attorneys for nobody, white or colored. I feel like when I advise a man of his rights, being sheriff of the county, well, then, that's all I can do.

Q. And you just generally advise people of their rights?

A. In a case like a man is placed in jail I do. If he wants to give a statement to me of a crime that he has committed I advise him of his rights.

Q. At this time you didn't have a warrant for him, did you?

A. How is that?

Q. At the time the statement was made you didn't have a warrant for the arrest of Isaac Sims, did you?

A. I really don't know whether there was a warrant on file or not. I couldn't say.

Q. You hadn't seen a warrant?

[fol. 131] A. I hadn't see one. There could have been one.

Q. But you hadn't seen it?

A. No.

Q. Would it have been filed in your office?

A. It could have been in the office.

Q. Now, how was the statement taken down? Who wrote it down?

A. One of the deputies.

Q. Do you know his name?

A. Yes. Dudley Jones.

Q. Did he write it in long hand or did he type it?

A. Long hand.

Q. Will you illustrate to the Court the manner in which it was taken down? Did he write it down as the defendant was talking?

A. That's right.

Q. Now, the defendant, Isaac Sims, didn't say that "4-13-1963", did he?

A. He didn't say that.

Q. He didn't say "10:30, P. M.," did he?

A. He didn't say that.

Q. Mr. Jones wrote that down?

A. Right.

Q. Did he say that "I, Isaac Sims, Jr., age 27 years, resident of Folkston, Georgia"? Did he say that?

A. Go ahead and read on down, I can tell you when he started talking.

Q. All right. He didn't say "make the following statement, freely and voluntarily. I have not been threatened or promised anything. I know that this statement can be used against me in court."

He didn't say that, did he?

A. He told me that.

[fol. 132] Q. He was told that?

A. Right. That is not the statement.

Q. "I, Isaac Sims, Jr." Strike that, please. What I asked you was that on the page before Mr. Jones started writing, or did Mr. Jones write it?

A. It was all written down in long hand.

Q. All that was written down before the gentlemen started writing?

A. All the statement—that was written down to start with, all at the same time. All that is in long hand. All the statement is in long hand. It is not any prepared form.

Q. "I, Isaac Sims, Jr., on April 13, 1963, was driving

Cleo Jackson's 1953 or '54 Bel Air Chevrolet, color brown and white."

Did defendant say that?

A. Right.

Q. "About 10 o'clock, A. M., I was driving down the St. George highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time."

Did defendant say that?

A. Yes.

Q. The closer I got to the car I had a feeling I have dealings with this white woman. I took the car I was driving and bumped this lady's car several times."

Did defendant say that?

A. Yes.

Q. "Finally I knocked her car in the ditch. I got out of my car and as she got out of her car I grabbed her."

Did the defendant say that?

A. Yes.

Q. "I pulled her across the road into some bushes. She was wearing pedal pushers, grey looking. She kept fighting me, and I hit her in the face, knocked her down. She [fol. 133] kept hollering for help."

Did the defendant say that?

A. Yes.

Q. Now, where was the defendant at the time he was making the statement?

A. He was sitting in the chair in the interview room.

Q. And where were you sitting in respect to the defendant?

A. Well, we were sitting in the room there around the table.

Q. Where was Mr. Jones sitting?

A. I don't recall just the exact spot.

Q. Was Mr. Jones sitting in front of him or behind him or what?

A. I couldn't say.

Q. All right. Were some of you behind him and some in front of him?

A. I don't know exactly where they were sitting. We were all around the table that was in the interview room.

Q. You were around the table?

A. Right.

Q. "She kept hollering for help. Then I was afraid someone would hear her, so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had kotex on. I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car to start. It would not crank. So then I realized that I was in trouble and I ran through the woods to Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me there was a lot of people and dogs hunting someone. These colored boys went to 'Mr. Hopkins' and told him where I was, at the home of a girl named Marguerite. Mr. Stokes and another white man [fol. 134] came and picked me up and carried me to the sheriff."

Did the defendant say that?

A. Yes.

Q. "The pants and shorts I was wearing had blood on them."

Did the defendant say that?

A. Yes.

Q. "This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of the Ware County Police Department, Dudley Jones, Deputy Sheriff, Ware County, Georgia, and B. C. Worley, constable of the 1231st District of Ware County, Georgia."

Did the defendant say that?

A. Did he say what, now?

Q. "This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Chief Johnson, Chief of Ware County Police".

A. He didn't say that.

Q. He didn't say that?

A. No.

Q. "I have been informed of my legal rights by Sheriff Robert E. Lee that I do not have to make any statement whatever, knowing that this statement can be used against me in a court of law, I have had the statement read to me, which consists of four pages, which is a true and correct statement made by me."

Did he say that—the defendant?

A. Let me see the statement.

(Counsel hands paper to the witness)

Q. You don't have any independent recollection of whether he said it or not?

A. Now, this part where it says, "I do not have to make any statement whatsoever"—he didn't say that. He was advised that he didn't have to.

[fol. 135] Q. Mr. Jones wrote that in?

A. Right. He was advised that he didn't have to. He didn't make that statement.

Q. So, some of the things contained in the statement were written in by Mr. Jones?

A. That's right.

Q. That the defendant didn't say?

A. That's right.

Q. Now, was this statement signed at 10:30 or did you start taking it at 10:30?

A. Well, it was somewhere approximately 10:30.

Q. Do you know what time on the evening of April 13, 1963, that you started taking this statement?

A. Well, the statement was short. It wouldn't have taken but just a few minutes.

Q. How many minutes?

A. Oh, ten or fifteen minutes.

Q. Did you start taking the statement at 10:30, or did you conclude it at 10:30?

A. Well, I wouldn't say we finished at 10:30 or started at 10:30. It was approximately 10.

Q. So you questioned him from 10 to 10:30?

A. How is that?

Q. You questioned him from 10 to 10:30?

A. I didn't say that.

Q. You started at 10?

A. I didn't say that.

Q. You started at 10:30, then?

A. I said that we could have finished at 10:30 or started at 10:30, I don't recall.

Q. Now, you know that the defendant has been talked with frequently, hasn't he?

[fol. 136] A. Well, that's the only time I've ever talked with him.

Q. That's the only experience you had with him?

A. Maybe go up in jail and ask him how he was getting along, or things like that.

Q. It would take him a long time to say how he was getting along didn't it?

A. I wouldn't say that.

Q. He didn't talk very much, did he?

A. Well, let me put it this way: I don't imagine I would do much talking if I was in the same shoes.

Q. I asked you whether the defendant talked very much?

A. On the 13th that's the most I've ever talked with him.

Q. Was the defendant asked any questions while he was making the statement?

A. I don't think so. As I stated, to begin with I identified myself and my position, the office I hold, and the other three men in there told him who they were—he was introduced to them, and then he was informed of his rights, and he wanted to make a statement—he wanted to clear up what had happened.

Q. You didn't ask the defendant any questions at all?

A. I could have. I could have.

Q. Did you?

A. Well, I wouldn't say whether I did or not. I just don't recall right now.

Q. But you don't deny that you could have asked the defendant some questions? Is that right?

A. Well, I wouldn't say that I did or I didn't.

Q. But I say that you don't deny that you could have asked him some questions?

A. I'm not going to say now, because I don't recall [fol. 137] whether I asked him any or I didn't.

Q. The question is you don't deny that you could have asked him some questions?

The Solicitor General: Your Honor, he has already answered him and said he didn't remember. If he doesn't remember he doesn't remember.

The Court: I think so.

Q. (By the Defendant's Attorney) Did Mr. Jones ask him any questions?

A. I couldn't say that.

Q. But you don't deny that he could have?

A. He could have.

Q. Did Mr. Johnson ask him any questions?

A. I don't think so.

Q. What about Mr. Worley—did he ask him any?

A. I don't think so.

Q. How far is Ware County from Folkston County?

A. Thirty some odd miles.

Q. How frequently do you keep prisoners who have committed offenses in Charlton County in Ware County?

A. How is that?

Q. How frequently do you keep Carlton County prisoners over in Ware County?

A. Carlton County?

Q. Yes, this county here?

A. Well, over a number of years we've kept several for them, I couldn't say how many.

Q. When you say over a number of years, could you give us approximately how many years?

A. I couldn't say.

[fol. 138] Q. You say you kept several? Is that right?

A. That's right. Not only from this county, but other counties.

Q. But it's infrequent that you keep Carlton County prisoners in your county jail? Is that right?

A. It depends on the crime that they are charged with.

Q. Do you have any other prisoners over there from Carlton County now?

A. I couldn't say. I'd have to check the jail records to see.

Q. Did you have any other Carlton County prisoners there on April 13, 1963?

A. I just don't know.

Q. Did you have any prisoners from Carlton County in your jail between November, 1963——

A. (Interposing) Let me state this: I keep prisoners in the Ware County jail, Federal and State, and I don't keep a record of how many are coming and going—I do keep a record, but I don't have that record with me, and I can't tell you for the last two years how many from Charlton

County have been up there. It could have been one or two or a half a dozen. I don't know.

Q. Now, Mr. Lee, who pays you to keep the Carlton County prisoners in your jail?

A. Charlton County pays me.

Q. You have to keep records of the prisoners?

A. Right.

Q. So you have some records there of prisoners you've kept?

A. Right.

Q. But you're not able to recall the number you've kept?

A. No.

Q. But you say they've been kept for several years?

A. Several.

[fol. 139] Q. Do you know whether or not Isaac Sims can read or write?

A. He can't read.

Q. Do you know whether he can write?

A. I don't.

Q. The only thing you know is that he signs his name? Is that right?

A. When the statement was read back to him he made the statement that he couldn't read, and the statement was read back to him.

Q. You didn't inquire as to whether he understood the paper or not, did you?

A. Yes, I asked him if he understood it—if that was correct.

Q. What did he say?

A. He said it was.

Q. How long did it take you to read it back to him?

A. Well, it's a short statement. Dudley is the one read it back to him—Dudley Jones.

Q. About how long did it take?

A. I don't know. Maybe a minute or so.

The Defendant's Attorney: You can come down.

Cross examination.

Q. (By the Solicitor General) Sheriff, just as a matter of information about keeping prisoners, I believe you've already testified that you keep State prisoners and Federal

prisoners—that's because you have a new, modern jail, isn't it?

A. Right.

Q. And you also keep a good number of prisoners from time to time from over in Bacon County? Is that right?

A. From all adjoining counties.

Q. From all adjoining counties?

A. Right.

[fol. 140] The Solicitor General: You can come down.

The Defendant's Attorney: Let me ask you one question.

Q. (By the Defendant's Attorney) You don't keep prisoners from Carlton County unless they're involved in some type of serious offense? Is that correct?

A. Well, I wouldn't say that. Probably I might keep one charged with a misdemeanor.

Q. Do you know under what circumstances you would keep a misdemeanor?

A. Well, I'll say I don't know. I might keep one. I wouldn't know unless I went back and checked the records to see what he was being charged with. I couldn't say. I wouldn't be able to say unless I looked at the record.

Q. But your testimony is that during the last several years you've only kept a few prisoners from Carlton County? Is that correct?

A. Several. I didn't say how many. Several.

Q. Earlier you testified that whether or not you would keep prisoners from this county in jail would depend on the offense? Is that right?

A. That's right, and the circumstances.

Q. What do you mean, sir, by "the offense"?

A. Well, it depends on the crime that was committed.

Q. Could you give an example?

A. Well, it wouldn't be for me to decide, now. If Charlton County wanted to send one up to me it would be left entirely up to the sheriff of this county.

Q. But you know the kind that you receive in the jail?

A. Well, it depends on the circumstances of the case whether the sheriff would want to send him up or not.

Q. And what would be the circumstances?

[fol. 141] A. I couldn't tell you because I don't know.

Q. And you've never made an investigation?

A. It's not my duty to come down here and investigate the other sheriff's business.

Q. You talked with Sheriff Sikes about the case, didn't you?

A. Right.

Q. And he told you about the circumstances, didn't he?

A. Right.

Q. So you knew why you were keeping the prisoner up here?

A. I knew.

The Defendant's Attorney: Come down.

The Solicitor General: Just one other question.

Recross examination.

Q. (By the Solicitor General) Now, I believe you already stated that he said he wanted to come down and make a statement to you and you took it for that reason?

A. That's right.

Q. You were the chief presiding officer at that time, weren't you?

A. Right.

Q. You were in charge of it?

A. Yes, sir.

Q. And, being sheriff and in charge of it, all the statement was made in your presence, wasn't it?

A. Right.

Q. And did you or anyone else in your presence offer him anything to make the statement?

A. No.

Q. Was he threatened any way?

A. No, sir.

[fol. 142] Q. Did anybody offer him anything or threaten him in any way?

A. No, sir.

Q. Was the slightest fear of injury produced to him by words or acts?

The Defendant's Attorney: I object to that.

The Court: On what ground?

The Defendant's Attorney: I object on the ground that one is not capable of saying whether or not there was the slightest fear.

Q. (By the Solicitor General) All right, I will ask him did anybody there beat him or anything in the sheriff's office?

A. No, sir.

Q. Was he threatened in any way?

A. No, sir.

Q. Did anybody talk harshly to him?

A. No, sir.

Q. Did anybody raise their voice and talk loud?

A. Just a normal tone of voice.

Q. Was there anything said or done that would give any reasonable man any reason to think that some harm or fear might come to him?

The Defendant's Attorney: I object to that.

Q. (By the Solicitor General) Well, was anything said or done to this man that might give him any ground for any reason to think some harm might come to him?

A. No, sir.

The Solicitor General: That's all.

Redirect examination.

Q. (By the Defendant's Attorney) When you say he wasn't beaten you mean he wasn't beaten in the jail? Is that right?

A. Well, if he was beaten I would see some signs on him. [fol. 143] Q. Well, actually, when you say he wasn't beaten you have reference to what happened in your jail? Is that right?

A. I'm talking about while he was in my custody. He hadn't been mistreated.

Q. And he was in the custody of other police officers before he was brought to your jail? Is that right?

A. Right.

Q. And you don't know what happened to him at that time, do you?

A. I do not.

Q. Did you talk kindly to him, Sheriff?

A. I didn't mistreat him any way, or curse him out any way, or anything like that.

Q. I asked you did you talk kindly to him?

A. I talked to him in a normal voice.

Q. Was that kindly?

A. Well, you can form an opinion from the way I'm talking now.

Q. Then, would you say you were talking kindly to him?

A. I say I talked in my normal voice.

Q. I'm asking you did you talk kindly to him?

A. He wasn't mistreated any way.

Q. I'm asking you, sir, if you talked kindly to him?

A. He wasn't abused and he wasn't cursed. He was talked to in a normal manner.

Q. Did you talk kindly?

The Solicitor General: I object to him continuing to ask the question time and time again. It is a matter of opinion. He can state how he did talk to him.

The Court: Let him say how he did talk.

The Defendant's Attorney: That's what I asked him, [fol. 144] your Honor.

The Court: No, you asked him did he talk kindly.

Q. (By the Defendant's Attorney) Would you answer the question?

A. I talked to him in a normal way like I would to anyone else.

Q. Did you ask him if he wanted any water or any food or anything like that?

A. I don't recall whether I did or not.

Q. Do you know whether he had had anything to eat?

A. He hadn't been in long enough.

Q. Do you know what time he came in?

A. Not exactly. Sometime in the afternoon.

(Witness excused)

DUDLEY JONES was thereupon called as a witness in behalf of the defendant, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Defendant's Attorney) Will you state your name, please?
A. Dudley Jones.
Q. What do you do?
A. I'm deputy sheriff of Ware County, Georgia.
Q. How long have you been deputy sheriff?
A. Approximately three and a half years in Ware County.
Q. What did you do before then?
A. Deputy sheriff of Charlton County.
Q. Of this county?
A. Yes.
Q. How long were you deputy sheriff here?
A. Six and a half years.
Q. What did you do before that?
[fol. 145] A. I was on the police force in Fernandina Beach, Florida, approximately ten years.
Q. Do you know the defendant, Isaac Sims, Jr.?
A. Yes.
Q. Do you know what time he was taken to the Ware County jail on April 13, 1963?
A. I did not receive him.
Q. Did you see him in the jail?
A. I did. I had carried another prisoner up in the jail and that's when I saw him.
Q. What time of day did you first see him?
A. Approximately 6:30 in the afternoon.
Q. Where was he at the time you first saw him?
A. He was in a cell on the third floor.
Q. Was anyone else in the cell with him?
A. No, there was not.
Q. Will you describe the cell?
A. Well, it was just a regular cell with two bunks in it and a commode.
Q. And no one else was in the cell with him?
A. There was not.
Q. What was his condition when you first saw him?

A. I just saw him through the little door there, and he just spoke to me and I didn't pay too much attention to him.

Q. When you say cell with a little door, did it have bars?

A. About three or four little bars where we feed through.

Q. When did you next see him?

A. About 10:30 that night.

Q. And what caused you to see him at that time?

A. Well, he said he wanted to talk to the sheriff.

[fol. 146] Q. How did you learn of that request?

A. Well, he told me at 6:30 through the bars.

Q. What did he tell you at 6:30?

A. When I walked up he spoke to me. He said, "Mr. Dudley, are you working here?" I said, "Yes." And I says, "What are you doing here," and he proceeded to tell me, and I said, "You want to talk to the sheriff about it?" He said, "Yes", so I made arrangements to see that he did talk to the sheriff.

Q. And what did you do when you made arrangements to see that he talked to the sheriff?

A. Well, we took him down to what we call the interview room and the sheriff was there.

Q. Was this at 10:30?

A. Approximately 10:30 that night.

Q. Had you attempted to get the sheriff before 10:30?

A. Yes, I had notified him slightly after I left upstairs.

Q. And you told the sheriff about 6 o'clock about it?

A. About 6:30 when I talked to him, and then time I finished putting the prisoner in and got back around and contacted the sheriff it was probably about that late, yes.

Q. How long did it take you to put the prisoners in?

A. Oh, maybe five minutes.

Q. About five minutes.

A. Approximately, yes.

Q. And after you put the prisoners in you——

A. (Interposing) One prisoner. Not prisoners.

Q. One prisoner?

A. Yes.

Q. Was that the only prisoner you put in?

A. At that time, yes.

Q. After you put that prisoner in did you then contact the sheriff?

[fol. 147] A. I did.

Q. Where was the sheriff at this time?

A. He wasn't in the office at that time. It was late in the evening, and he came by the jail a little later on and I contacted him.

Q. What time did he come by the jail?

A. I don't remember exactly what time it was.

Q. Was it before 10:30?

A. Yes, it was.

Q. About what time before 10:30 was it?

A. That I don't know.

Q. What's your best recollection?

A. I don't.

Q. You have no recollection?

A. I don't remember exactly—I don't know what time it was, but it was before 10:30. It was between 6:30 and 10:30.

Q. Was it closer to 10:30 or closer to 6:30?

A. I don't know.

Q. You have no recollection?

A. No, I don't know exactly what time it was.

Q. How long did the sheriff stay at the jail when he first came?

A. Oh, he was probably there two or three hours then. He came in and I talked to him.

Q. And where did you talk to him?

A. In the office.

Q. In which office?

A. In the main office, where the radio and all is in the main office.

Q. And how long did the sheriff stay there?

A. I imagine he stayed there two or three hours.

Q. And the sheriff was there for two or three hours before 10:30?

[fol. 148] A. No, no. From the time that I contacted him until after we had taken this statement and he left. After we got through the statement somebody else came in and wanted to talk to him. It was probably two hours or two and a half or three from the time I told him and he got ready to leave and had completed everything, not only his case, but others, too.

Q. Let's see, now: You say the sheriff came in sometime between 6:30 and 10:30?

A. Right.

Q. Is that right?

A. Yes.

Q. And the sheriff stayed there for about three hours?

A. Well, I'd say two or three. Somewhere in that neighborhood. I don't know exactly how long.

Q. About what time did the sheriff leave?

A. That I don't know.

Q. What's your best memory?

A. I can't say.

Q. Did the sheriff leave before you left or did you leave before the sheriff left?

A. He left before I did—no, wait a minute. No, he left before I did.

Q. And what time did you leave?

A. Oh, I went back and forth, and I don't remember what time I did actually leave the jail and check out.

Q. Well, approximately what time did you usually check out?

A. Oh, probably 11:30 or 12 o'clock, or somewhere along there.

Q. What time did you check out on April 13, 1963?

A. I don't remember.

Q. What are your usual working hours?

[fol. 149] A. There's not any. As long as something is there to do. Just four men in that large county we work a lot overtime.

Q. What time do you usually come on?

A. If I'm on day shift I'm on at 6 o'clock in the morning.

Q. Now, on April 13, '63, were you on day shift?

A. I don't remember.

Q. You don't know whether you were on the day shift or not?

A. I do not.

Q. Do you know, actually, whether you had been working from 6 o'clock, A.M., on the 13th of April, 1963, and 6 o'clock, P.M.?

A. I don't.

Q. But you do know that you worked after 6 o'clock on April 13th?

A. Yes, I was working after 6 o'clock.

Q. What are the hours of the respective shifts?

A. There's not any special hours.

Q. But you do have shifts of how many hours?

A. Twelve hours.

Q. Twelve hours a shift?

A. Yes, as long as there's something to do.

Q. And when does the shift start?

A. What shift?

Q. Any shift?

A. Starts off at 6 o'clock in the morning. I come out at 6 in the morning now.

Q. And how long do you work.

A. I work until 6 except on Wednesdays, Fridays and Saturdays.

Q. Now, you work from 6 to 6 in the day shift and 6 to 6 in the night shift?

A. No, work sometimes a split shift. Sometimes come on at 6 o'clock.

Q. But you were off Wednesdays, Fridays and Saturdays?

[fol. 150] A. No, I worked late Wednesdays, Fridays and Saturdays. The other two deputies have Wednesday off and we have to work our shift and double over for them on theirs. And on Fridays and Saturdays we all do car work, two men to the car.

Q. You don't have any time off on Saturday?

A. No.

Q. Work all day on Saturday?

A. That's right.

Q. What time did you start on Saturday?

A. Right at the present I'll start Saturday morning at 6 o'clock.

Q. Now on April 13th, '63, what time did you start?

A. I don't know. I don't know what shift I was on then.

Q. Now, you say you quit about 11:30 on the 13th? Is that right?

A. Or 12, or somewhere along there. I don't know exactly what time it was.

Q. Now, about how many hours had you been working when you quit?

A. I don't know because I don't remember the time I started.

Q. Are you on a salary?

A. I work on a salary.

Q. Is that a weekly salary?

A. By the month.

Q. And I believe you testified that you first saw the defendant about 6:30? Is that right?

A. Yes, that's right.

Q. And you talked with him through some bars of the jail? Is that correct?

A. Yes.

Q. And you say you did not have an opportunity to see the defendant at that time? Is that correct?

A. I did not see him at that time, except what little I [fol. 151] could see him through the bars.

Q. What part of him could you see through the bars?

A. When he spoke to me he was standing back a little bit—has face.

Q. Did you recognize him?

A. After he spoke to me and said, "Mr. Dudley", I did.

Q. You recognized his voice?

A. Yes.

Q. How long had you been knowing the defendant, Isaac Sims, on April 13, 1963?

A. I don't know. Quite a few years. I was born and raised in this county.

Q. You say quite a few years—how many?

A. Oh, ten or twelve.

Q. So you knew Isaac pretty well, didn't you?

A. Yes.

Q. Did you ever have Isaac work for you?

A. No.

Q. And you say you didn't see him again until about 10:30? Is that right?

A. That's correct.

Q. Did you take him down to the sheriff?

A. No, the jailer brought him down.

Q. What's the name of the jailer?

A. I dont remember who was on at that time. Whoever the jailer was on duty at that time.

Q. And when he was brought downstairs was he handcuffed?

A. When he was brought down he was not in handcuffs.

Q. Was the jailer armed?

A. No, he was not.

Q. He wasn't armed. Were you armed?

[fol. 152] A. I had my gun on. I was on duty.

Q. When Isaac was brought to the interview room who was in the room?

A. Sheriff Lee was in there, B. C. Worley, constable of the 1231st District then. He is now county policeman. And Estes Johnson, Chief of County Police.

Q. And you got a chance to see the defendant at that time, didn't you.

A. I did.

Q. What was his appearance at that time?

A. Well, just normal. About like he is now.

Q. What did he have on?

A. I don't remember what he had on.

Q. But you are sure that he was normal?

A. Do what?

Q. But you're sure that he was normal?

A. He looked to me like he was.

Q. You got a good look at him?

A. Yes, I did.

Q. Did you get a chance to see his face?

A. Yes.

Q. Did you see any injuries about his face?

A. I did not.

Q. Did you look to see if there were any injuries?

A. Well, I was looking right at him when he was talking.

Q. Did you think he was scared?

A. No.

Q. Were you friendly with him?

A. Well, just like I always talked to him.

Q. How did you always talk to him?

[fol. 153] A. Well, just a normal tone of voice.

Q. Isaac knew you? Is that right?

A. Yes.

Q. Now, you took a statement from Isaac? Is that right?

A. I did.

Q. You wrote it out in longhand?

A. I did.

Q. What time did you start writing the statement down?

A. At 10:30.

Q. At 10:30?

A. Right.

Q. How long did it take you to write it down?

A. Approximately twenty or thirty minutes, or somewhere along there.

Q. I didn't quite understand you.

A. About twenty minutes.

Q. About twenty minutes?

A. Yes.

Q. Where was Isaac at the time you were writing it down?

A. We were sitting at a table, similar to this table right here. It was up against the wall, and Isaac was sitting on this side, the sheriff was sitting here (indicating), and I was sitting on the other side.

Q. The sheriff was sitting next to Isaac? Is that right?

A. He was sitting at the end of the table and I was sitting facing him.

Q. All right. You say Isaac was sitting on one side the table and you were sitting on the other side of the table? Is that right?

A. Yes.

Q. You were sitting on the opposite side?

A. The table was up against the wall and I was sitting [fol. 154] over on that side.

Q. And Isaac was sitting next to the wall? Is that right?

A. Well, as you come in the door—you walk in the door this way, and it's between the door back that way probably about eight feet, and it's a table similar to that (indicating). He was sitting right there. He was actually sitting at the door—the door was closed, but he was sitting with his back to the door.

Q. When you refer to a table similar to that, you have reference to a wooden table that appears in the court room that's about six feet in length and about four feet in width, and about, I'd say, four feet high? Is that about right?

A. I guess so.

Q. That is the type of table to which you have reference?

A. It was a wood table similar to this right here.

Q. And you were sitting opposite Isaac?

A. Right. Facing him.

Q. And Isaac was next to the wall? Is that right?

A. Actually, he was next to the door.

Q. Was the door closed?
A. Yes.
Q. Was it locked?
A. No.
Q. And where was the sheriff sitting, Mr. Lee?
A. He was sitting at the head of the table.
Q. He was sitting at the head of the table?
A. Yes.
Q. Was that, actually, near the door?
A. Well, you'd have to go around Isaac to get to the door.
Q. Now, where was Mr. Johnson?
A. Well, he was sitting back away from us over there [fol. 155] next to the entrance to the back door, about ten feet back over there.
Q. Was he sitting behind Isaac or behind you?
A. No, Isaac was sitting like that (indicating) and he was sitting at an angle from him.
Q. And he was sitting side of him?
A. No, he was sitting ten or twelve feet away from him.
Q. At right angle?
A. Yes.
Q. Now, where was Mr. Worley?
A. Well, he was sitting side of him in another chair.
Q. Sitting side of Mr. Johnson?
A. Right.
Q. All right. And you sat at the table? Is that right?
A. Yes.
Q. Did you ask Isaac any questions?
A. No.
Q. You didn't ask him any questions at all?
A. I did not.
Q. Did Mr. Lee ask him any questions?
A. Not that I heard, he didn't.
Q. Isaac just started talking?
A. Well, we informed him of his rights, and nobody was going to bother him, asked him did he want to give a statement, and told him his right to have a lawyer, and he said he didn't need one—he'd go ahead and tell it; and so he proceeded to tell it, and I wrote it as near as I could what he said.

Q. Now, you had been knowing Isaac about twelve or thirteen years, hadn't you?

A. Yes.

Q. And you knew Isaac had never gone to school, didn't you?

A. Well, I didn't check on him that close to see whether [fol. 156] he ever went to school or not.

Q. You knew Isaac hadn't had too much education, didn't you?

A. I couldn't tell you.

Q. You knew Isaac had had some mental trouble, didn't you?

A. What?

Q. Had some mental trouble?

A. I didn't know about that.

Q. You didn't know about that?

A. No.

Q. You knew that Isaac did work as a laborer, didn't you?

A. Yes. He worked as a laborer. I didn't know what all he was doing. I didn't keep that close tab on him. I just knew him, but I didn't keep close tab on him.

Q. And you didn't ask Isaac any questions at all?

A. I did not.

Q. You wrote down that he had been informed of his rights, didn't you?

A. I did.

Q. Isaac didn't say that, did he?

A. It was read to him.

Q. You mean it was read to him?

A. Yes. And he was told what his rights were before it was ever written down.

Q. And it was read to him after?

A. That's right.

Q. Did you read the statement to him?

A. I did. I asked him did he want to read it and he told me to read it to him. He said he couldn't read, so I read it to him, and asked him if he understood it, and he said, "Yes".

Q. How long did it take you to read it?

[fol. 157] A. Oh, maybe five or six minutes. I just took my time and read it to him so he could thoroughly understand it.

Q. And it took Isaac about twenty or thirty minutes to make the statement to you, and it took you only five minutes to read it to him?

A. Well, there is a diff[illegible]ence in writing it down. I don't write too fast.

Q. Now, Isaac doesn't talk too fast, either, does he?

A. Just a normal tone.

Q. Isaac sort of mumbles?

A. He stutters. He took time between times to tell what happened.

Q. Mr. Jones, I'd like for you to help me on this if you can: When the sheriff came to the jail, and you say the sheriff came between 6:30 and 10:30, a space of two to three hours? Is that right?

A. Yes, approximately.

Q. Now, what was the sheriff doing during that period of time?

A. He was talking to other people who came in wanted to see him.

Q. To see whom? The sheriff?

A. Yes.

Q. But not to see Isaac?

A. No.

Q. Now, did anybody come to see Isaac while he was in jail there?

A. Not that I know of. Do you mean prior to the trial or after?

Q. Just a minute. Do you know whether anybody came to see Isaac prior to the time that he made the statement?

A. Not as I know of. During the day I couldn't tell who went up to see him.

Q. If somebody had come there to see him you would have known it, would you not?

A. No, I would not.

[fol. 158] Q. Well, I came to see him yesterday, didn't I?

A. Well, I just happened to be around at that time. I work out on the road.

Q. Now, was the jailer? Is the jailer a negro fellow or white fellow?

A. White.

Q. Do you know his name?

A. Mr. Pete Barns is on now. I don't know whether he was on at that time or not.

Q. Do you know anybody else who might have been on at that time?

A. No, I don't know.

Q. Do you usually keep prisoners from this county in the Ware County jail?

A. We keep them on several occasions, yes. When the sheriff of this county wants one kept we take him up there and keep him, like we do for other counties.

Q. You've been a deputy in this county and you're presently deputy in Ware County? Right?

A. Yes.

Q. Under what circumstances are prisoners from this county transferred to Ware County?

A. It's just according to whether the sheriff of this county wants them carried up there or not.

Q. And you are familiar with the facts and circumstances when the sheriff of this county sends prisoners up there, aren't you?

A. Well, it's just according to what the sheriff wants to do. He can send them up there on any occasion if he wants to.

Q. Now, from your experience what kind of cases does he carry prisoners up there on?

The Solicitor General: I want to object to that. It has [fol. 159] no bearing on it, and dinner time is running out here. It's just taking up time here with question after question that have no bearing on the case. I want to object to it because it's immaterial and irrelevant.

The Court: Ask pertinent questions and go into it as far as necessary, and, in the interest of time—well, proceed.

The Defendant's Attorney: Do I understand the Court is limiting my examination?

The Court: No, but I agree with the Solicitor that I see no purpose in a lot of questions, but go ahead.

Q. (By the Defendant's Attorney) Do you remember testifying in this case in October, 1963?

A. Yes.

Q. Do you remember being examined by Mr. Hayes?

A. Yes, I do.

Q. And do you remember testifying as follows: "Question (By Mr. Hayes): Now, what did he tell you up there?" "Answer: Well, getting back to the time when he asked me was I working up there, and I told him yes—I asked him what he was doing in there, and he said he had been put in there for molesting a white woman. I said, 'In Folkston?' He said, "Yes." And I asked him what happened, and he started to tell me, and I said, 'Have you talked to anybody about this?' He says, "No." I said, 'Would you be willing to make a statement to that effect?' He said, 'I will.' And, in turn, I went down to Sheriff Lee and told him what was said. Sheriff Lee, in turn, contacted Sheriff Sikes, and he told him to go ahead and get a statement, and the sheriff sent me upstairs and I brought the subject down and we obtained a statement from him."

Now, is it your testimony now that you didn't bring [fol. 160] Isaac Sims downstairs?

A. The jailer was the one that brought him down from the cell to the room as far as I remember.

Q. You don't remember testifying over here in October, 1963?

A. That I brought him down?

Q. Yes, sir.

A. The jailer brought him down.

Q. So your testimony at that time is incorrect? Is that right?

The Solicitor General: Now, your Honor, we object to that statement. When he said "We brought him down" it could certainly mean that one member of the force brought him down. He's trying to insinuate that he told something that wasn't right, when he's just inferring that.

The Court: All right.

Q. (By the Defendant's Attorney) In October, 1963, you testified, "and the sheriff sent me upstairs and I brought the subject down and we obtained a statement from him."

Now, was your testimony incorrect at that time?

A. I don't remember whether it was or not, but I do not remember going up and getting him and bringing him down.

Q. So you've changed your testimony?

A. I haven't changed it, but I don't remember whether I said that or not.

Q. Do you remember whether or not you went up and got him?

A. I don't believe I went up and got him.

Q. So your testimony at that time is incorrect?

A. If that's what it says down there, but I still didn't go up and get him.

Q. You testified here that Sheriff Lee was downstairs the first time you talked with him about it? Is that right?

[fol. 161] A. He was not.

Q. Well, you testified in October, 1963, "I went down to Sheriff Lee and told him what was said."

A. But it didn't say what time I went down there. I went down to him, but I didn't say what time.

Q. All right. I thought you called Sheriff Lee.

A. Well, I did. He came to the jail and I talked to him and told him about it—he wanted to make a statement, but he wasn't there when I went back down. I contacted him and he came down and I told him.

Q. You remember testifying in the former case as follows: "Question (By Mr. Hayes): Now, about what time of the day or night did you see him?" You answered: "Well it must have been around 6:30." "What were you doing at the time? Were you on duty?" And you answered: "Yes, sir." and then goes on in the sheriff's office, and then you went on in response to Mr. Hayes' question, and you said in answer to the question: "And you were on the outside of the cell?" And you said, "Right." "Question: You had no direct contact with him? In other words, the bars were between you? It that right?" "Yes, sir." That was your answer. "And was any other officer present?" "Answer: No, sir." "And at that time did you threaten him in any way?" Your answer: "No, sir. I did not." "Question: Did you promise him anything?" "Answer: No, sir." "Was there any hope of reward offered him?" "Answer: No, sir." "Was he in position to be in the slightest fear of injury any way?" "Answer: No, sir." "Was he offered the slightest hope of reward or benefit?" "Answer: No, sir." "Was he induced by another in any manner to make a statement?" "Answer: No, sir." "Now (he said), what did he tell you up there?" And you testified that he said he wanted to make a statement, and you went downstairs and contacted the sheriff. Now, which is correct, the statement you made in October,

[fol. 162] 1963, or the statement you are making on the stand now?

A. I contacted him and he came down and I talked to him about it. When you contact a man personally by 'phone it's still contact.

Q. Let me ask you this question: You said, "I went down to Sheriff Lee." Now, what did you mean by "I went down to Sheriff Lee?"

A. I couldn't contact him upstairs. There's not a 'phone, and I went downstairs and contacted him.

Q. Did you go downstairs where Sheriff Lee was?

A. No, I went down there where I could contact him. His office is downstairs and we call it "down there" when we're upstairs.

Q. Well, you did go downstairs and see him?

A. Not directly to him, no.

Q. Well, that's your statement in the record? Is that right?

A. Well, I contacted him just like it says there, but it didn't say what time I contacted him, and I didn't say there what time I contacted him.

Q. You said, "I went down to Sheriff Lee."

The Solicitor General: Your Honor, he has already asked him that question several times and he explained it.

The Court: I think he has.

Q. (By the Defendant's Attorney) And you stated at the time the statement was made he had no attorney? Is that correct?

A. He did not. He was advised he could get one.

Q. Did you offer to permit him to call?

A. He didn't ask to.

Q. And you didn't ask him if he wanted to call?

A. No. He just said he didn't want an attorney.

Q. Did you ask him if he wanted to talk to an attorney or his sister or anybody?

A. No, he didn't ask to.

[fol. 163] Q. And you didn't tell him that he could, did you?

A. No. He didn't ask me.

Q. As a matter of fact, you've never told him he could make a telephone call, did you?

A. No, he didn't ask me to.

The Defendant's Attorney: That's all.
The Solicitor General: You can come down.

(Witness excused.)

(Whereupon, at 1:30, P.M., a recess was taken.)

After Recess

2:30 P.M.

The Court: You may proceed.

The Solicitor General: It is stipulated between counsel for the State and the accused that when Mr. Theo Dinkins testified in relation to the members of the Jury Commission who were present and selected the traverse jury and the grand jury, that he stated that five members were present, which was correct, but there was also another member of the Jury Commission who was sick and could not be there, whom he did not name, and his name was Harold Crawford.

The Court: All right, the jurors that were here this morning, it is going to be necessary again that the jurors leave the court room. You may do that now.

(People leave the court room.)

The Court: All right, call your next witness.

The Defendant Attorney: I'll call the defendant, Isaac Sims, Jr., to take the stand, please.

Isaac Sims, Jr., defendant herein, was thereupon called as a witness in his own behalf, and, having been duly sworn, testified as follows:

[fol. 164] Direct examination.

Q. (By the Defendant's Attorney) Will you speak up where the Court can hear you?

A. Yes, sir.

Q. State your name, please.

A. Isaac Sims, Jr.

Q. I'm going to ask you some questions, Mr. Sims, and try to answer to the best of your knowledge.

A. Yes, sir.

Q. Do you know the date of your birth?

A. Yes, sir.

Q. What is it?

A. In February.

Q. February when?
A. February the 5th.
Q. When?
A. The 5th.
Q. What year?
A. Well, I couldn't exactly tell you that.
Q. You say you couldn't exactly tell that?
A. I couldn't exactly tell you that.
Q. Do you mind if I call you "Isaac"?
A. No, sir.
Q. Isaac, do you know how old you are?
A. Yes, sir.
Q. Do you remember your parents?
A. Yes, sir.
Q. What's your father's name?
A. Isaac Sims.
Q. Is he living or dead?
[fol. 165] A. He's dead.
Q. And your mother?
A. Yes, sir.
Q. She's dead, too?
A. Yes, sir.
Q. When did your father die?
A. Well, I couldn't exactly remember.
Q. When did your mother die?
A. She been dead about twelve years now. I don't remember what date it was.
Q. Isaac, do you have any sisters and brothers?
A. Yes, sir.
Q. How many sisters do you have?
A. Three.
Q. Three?
A. Yes, sir.
Q. Where do they live?
A. Well, two of them live here and I've got one living in Atlanta.
Q. What are their names?
A. One named Hilda and another one named Lula Mae and Inez Sims.
Q. Do you have any brothers?
A. Yes, sir; one.
Q. Where does he live?

A. New York.

Q. Isaac, how long have you lived in Carlton County?

A. All my life.

Q. Have you ever been away from the county for a long period of time?

A. No sir.

Q. Have you been out of the county at all?

[fol. 166] A. Yes, sir.

Q. Where did you go?

A. Well—you mean off doing time or anything?

Q. For anything?

A. Well, I went to Lake City and stayed a while.

Q. How long did you stay?

A. About a year and six months.

Q. Is that Lake City, Florida?

A. Yes, sir.

Q. You were in service for a while, too, weren't you?

A. Yes, sir.

Q. What did you do for a living, Isaac?

A. Well, I pulpwood.

Q. What is that?

A. I beg your pardon?

Q. What is that?

A. Well, stuff you make paper out of.

Q. Did you say that you did laboring work?

A. Yes, sir.

Q. Do you know what that means?

A. Well, labor, I imagine.

Q. What does that mean to you?

A. I'm not able to tell you what it means. All I know is labor.

Q. How much did you make when you worked, Isaac?

A. Well, I made from sometimes $60 a week, and sometimes 40.

Q. You were paid so much a load, weren't you?

A. Yes, sir.

Q. Isaac, have you ever gone to school for a little while?

A. Yes, sir; a while.

Q. How long did you go to school, Isaac?

A. Well, I didn't go too much on account of I had to help [fol. 167] my father work, and he taken me out of school.

Q. How far did you go in school, Isaac?

A. I went to the third grade.

Q. And how old were you when you quit the third grade?

A. Well, I was about seventeen or eighteen.

Q. About seventeen or eighteen when you quit the third grade?

A. Yes, sir.

Q. Isaac, can you read and write?

A. No, sir.

Q. Isaac, I show you a copy of the indictment returned against you, No. 1488, and I ask you to read it aloud if you can.

A. Well, I couldn't read it.

Q. You say you can't read and write?

A. No, sir.

Q. But you can write your name, can't you?

A. Yes, sir; I can print it pretty good.

Q. Isaac, do you remember an incident that happened back in April, on April 13th, 1963? Do you remember being over at Toledo and being taken into custody by Arthur Walker?

A. Yes, sir.

Q. After you were taken into custody over in Toledo what happened to you?

A. Well, I got in the car with Mr. Noah Stokes—I mean in a pickup, with another white fellow. I don't know his name. And I went out to the highway and got in the car with the State Patrol.

Q. When you got to the highway did you see anything at the highway unusual?

A. Yes, sir.

Q. What did you see, Isaac?

A. Well, I seen a heap of cars and a right smart of white folks.

[fol. 168] Q. Did you see a car there burning?

A. No, sir.

Q. All right. After you were taken out on the highway do you know where you were then taken?

A. When I got in the car with the State Patrol?

Q. Yes.

A. They brought me to Dr. Jackson's office.

Q. And where is Dr. Jackson's office located?

A. Sir?

Q. Where is Dr. Jackson's office located?
A. Right up the street there.
Q. Is it in Folkston, Georgia?
A. Yes, sir.
Q. Who was in Dr. Jackson's office when you got there?
A. Well, there wasn't nobody in there. After I got in there there was a right smart in there then.
Q. And when you say "a right smart", about how many do you mean, Isaac?
A. I couldn't tell you how many, but there was about seven or eight of them in there, I imagine.
Q. Were they all white people?
A. Yes, sir.
Q. Were some of them peace officers?
A. Yes, sir. State Patrol.
Q. Did they have on uniforms?
A. Yes, sir.
Q. Did they have on pistols?
A. Yes, sir.
Q. And did anything happen to you after you got in Dr. Jackson's office?
[fol. 169] A. Yes, sir.
Q. What happened to you, Isaac?
A. Well, Dr. Jackson, he knocked me down and kicked me over my eye lid and busted my eye on the right side.
Q. Did anything else happen to you?
A. And he grabbed me by my private and drug me on the floor.
Q. Did he drag you by your private on the floor?
A. Yes sir.
Q. Did that hurt you, Isaac?
A. Yes, sir.
Q. Did it hurt you a lot?
A. Yes, sir; pretty bad.
Q. Did Dr. Jackson take off your clothes?

The Solicitor General: Now, we object to all these leading questions.

The Defendant's Attorney: Your Honor, I can save time and expedite it. It's obvious that the witness has extremely limited ability.

The Solicitor General: He doesn't show any lack of ability to be able to comprehend what's going on.

The Court: Well, ask him the questions and let him answer them.

Q. (By the Defendant's Attorney) What, if anything, happened to your clothes, Isaac?

A. What happened to my clothes?

Q. Yes. When you were in Dr. Jackson's office.

A. They taken them off.

Q. Do you know who took your clothes off?

A. Yes, sir; he taken them off.

Q. Do you remember what, if anything, happened to your [fol. 170] clothes after they were taken off?

A. No, sir; I didn't see them no more.

Q. Were you given any other clothing to wear?

A. Yes, sir; a pair of white pants.

Q. Were you later on taken from Dr. Jackson's office to another place?

A. Yes, sir.

Q. Where were you taken?

A. Ware County jail.

Q. Do you know who took you over to the Ware County jail?

A. Well, yes, but I don't know his name.

Q. Were they white men or negro men?

A. They was white men.

Q. Were they police officers?

A. State Patrol.

Q. Did they have on uniforms?

A. Yes, sir.

Q. Did they have on pistols—guns?

A. Yes, sir.

Q. What were you wearing, if anything, other than white pants when you were taken to the Ware County jail?

A. I had on my top shirt.

Q. Pardon?

A. I had on a top shirt.

Q. When you were taken to the Ware County jail where in the jail were you taken?

A. Well, on the fifth floor—on the third floor.

Q. Were you put in some type of cell?

A. Yes, sir.

Q. Can you tell what the cell looked like?

A. Yes, sir.

[fol. 171] Q. What did it look like, Isaac?

A. Well, it's a little small cell with one door to it, and it's got a little hole they feed me through,

Q. Do you know about what time of evening or night it was when you got over to the Ware County jail?

A. Well, it was around about—I'd say between 5 or 6 o'clock, I believe it was. It might not have been that late.

Q. Do you remember seeing Mr. Jones over at the jail?

A. Yes, sir; I seen him.

Q. Do you know about what time you saw him?

A. Well, I seen him when I went down to the office.

Q. What time did you go down to the office, Isaac?

A. Right after Mr. Sheriff Lee came up.

Q. How long had you been in the jail before Sheriff Lee came up?

A. Well, I was up there about—about two hours, I imagine.

Q. Did Sheriff Lee come upstairs where you were?

A. Yes, sir.

Q. Did he say anything to you?

A. Yes, sir; he asked me—he said did I say I wanted to talk with him, but I didn't say that.

Q. He said what, now?

A. He asked me did I say I wanted to talk with him, but I didn't said I wanted to talk with him, but I went downstairs and talked with him.

Q. Was this Sheriff Lee?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir; that's him (indicating).

The Defendant's Attorney: Let the record indicate that the witness identified Sheriff Lee.

[fol. 172] Q. Now, are you acquainted with Mr. Jones—Mr. Dudley Jones?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Will you point him out?

(The witness points)

The Defendant's Attorney: Let the record show that the witness points to Deputy Sheriff Dudley Jones.

Q. Do you remember talking with him?

A. When I went downstairs.

Q. You say you talked with Sheriff Lee upstairs—do you remember talking with Deputy Sheriff Jones upstairs?

A. No, sir; I ain't never hold no conversation with him, no more than he come up there and speak to me.

Q. This was on April 13, 1963.

A. Yes, sir.

Q. You say you don't remember talking to Deputy Sheriff Jones?

A. No, sir.

Q. Do you remember talking with Sheriff Lee?

A. Yes, sir.

Q. Was this upstairs in the jail?

A. Yes, sir.

Q. What did you say to him?

A. I didn't say anything to him. He just told me that I wanted to talk with him, and he said the sheriff from Folkston told him that he wanted him to talk with me.

Q. That was Sheriff Lee said that?

A. Yes, sir.

Q. Did anybody else say anything to you while you were up there?

A. No, sir.

Q. Did anybody come in your cell where you were?

A. No, sir.

[fol. 173] Q. Now, do you know about what time it was when you were taken downstairs on April 13th?

A. About 9 or 10 o'clock, I imagine, that night.

Q. Do you remember being taken into the office?

A. Yes, sir.

Q. Do you remember who was in the office with you, if anyone?

A. Yes, sir; there was some in there, but I didn't know but two was in there.

Q. Can you name the two that you know who were in there?

A. Yes, sir.

Q. Who were they?

A. Mr. Sheriff Lee and Mr. Dudley.

Q. Do you remember Mr. Jones saying anything to you?
A. No, sir; he didn't say nothing to me.
Q. Do you remember Sheriff Lee saying anything to you?
A. Yes, sir.
Q. What did he say?
A. He just asked me—I can't remember now what all he asked me.
Q. Do you remember him asking you something?
A. Yes, sir; he asked me about signing a statement.
Q. What did you say?
A. Well, I didn't remember signing it. I didn't know what I was signing.
Q. Did he ask you any questions?
A. Yes, sir.
Q. Did you answer his questions?
A. Yes, sir; some of them.
Q. Did you see anybody writing anything down when you were being asked questions?
[fol. 174] A. Yes, sir.
Q. Did you see anybody writing anything down when you were answering the questions?
A. Well, Mr. Dudley, he was writing.
Q. Now, you had some stitches in your eye, didn't you?
A. Over my eye.
Q. Over your eye?
A. Yes, sir.
Q. Were you still in pain at this time?

The Solicitor General: Now, your Honor, I've objected to his leading questions. Now, that is completely leading—did you have any stitches in your eye, and were you in pain, and so forth. I object to it.
The Defendant's Attorney: All right, I'll withdraw the question, your Honor.
The Court: All right.

Q. (By the Defendant's Attorney) Can you tell the Court how you felt, Isaac?
A. Well, I felt pretty rough for about two or three weeks, more on my private than I did on my face.
Q. When you said you felt pretty rough, what did you mean, Isaac?
A. Well, I was paining a right smart.

Q. Were you paining a right smart when you were in the room with Sheriff Lee and Deputy Sheriff Jones?

A. Yes, sir.

Q. Now, after you were taken into custody up until the time you were taken upstairs had you been given anything to eat?

A. No, sir.

Q. Were you hungry?

A. Yes, sir; I could have eat.

[fol. 175] Q. Isaac, do you know what "freely and voluntarily" means?

A. I beg pardon?

Q. Do you know what "freely and voluntarily" means?

A. Freely and voluntary?

Q. Voluntarily?

A. No, sir; I do not.

Q. Do you know what is meant by "the statement can be used against you in court"?

A. Statement can be used against me?

Q. Statement can be used against you in court. Do you know what that means?

A. No, sir.

Q. Do you know what it means to be informed of your legal rights?

A. Well, that's like being good or something?

Q. Is that what it means to you, Isaac?

A. Yes, sir.

Q. Do you remember the statement being read to you over in the sheriff's office on the 13th of April?

A. Yes, sir.

Q. Now, Isaac, you stayed in jail up in Ware County from that Saturday until that Monday, didn't you?

A. Yes, sir.

Q. And then you were brought back over here?

A. Yes, sir.

Q. Is that right?

Q. Do you remember being brought into court when you came back over here on the 15th of April?

A. Yes, sir.

Q. Did you have a lawyer at that time?

A. When I came back over here?

Q. Yes.

A. No, sir.

[fol. 176] Q. Were any of your friends here?

A. No, sir.

Q. Isaac, at the time you were over there in jail in Ware County on the 13th did anybody tell you that you had a right to a lawyer?

A. Had to write me a lawyer?

Q. Had a right to a lawyer? Do you understand what that means?

A. You mean when I was in jail?

Q. In Ware County on the 13th when you were brought down to Sheriff Lee's office?

A. Not as I remember.

Q. Do you know whether or not anybody explained that statement to you? Do you know what "explain" means?

A. No, sir.

Q. Isaac, do you know whether or not anyone told you you could call your family?

A. No, sir.

Q. Isaac, do you know what "Constitutional rights" means?

A. Do you mean good or something?

Q. Is that what it means to you, Isaac?

A. Yes, sir.

The Defendant's Attorney: The witness is with you.

Cross examination.

Q. (By the Solicitor General) Now, Isaac, about what time were you picked up at Toledo on that day—on this Saturday, April 13th, 1963? About what time was it?

A. It was about—I'd just say 3 o'clock.

Q. You were actually picked up after dinner, then, about 3 o'clock? Is that right?

A. Yes, sir?

Q. Now, who was it picked you up? What was the boy's name?

[fol. 177] A. That picked me up?

Q. Yes. Was it T. W. Walker?

A. I believe it was T. W. Walker.

Q. It was T. W. Walker and another boy? Were they colored or white?

A. They were colored.

Q. So, actually, you were caught by two colored boys? Is that right?

A. Yes, sir.

Q. And they turned you over to Mr. Stokes? Is that right?

A. Yes, sir.

Q. And when those colored boys caught you they didn't hurt you any way, did they?

A. No, sir.

Q. Now, did Mr. Stokes hurt you in any way?

A. No, sir.

Q. And you were turned over then to the State Patrol? Is that right?

A. Yes, sir.

Q. And I believe you said you went to Dr. Jackson's office and then you went over to Waycross, and you got over there about 5:30 or 6 o'clock? Is that right?

A. Yes, sir.

Q. Now, when you were in the Waycross jail the first law officer you saw was Dudley Jones, wasn't it. Didn't he come up there and you hollered at him?

A. I'm not going to tell no lie on Mr. Dudley. I don't remember hollering at Mr. Dudley.

Q. Well, didn't you see Dudley on the third floor? Didn't you speak to him up there?

A. Yes, sir, I speak to him, but I don't remember holler-
[fol. 178] ing at him.

Q. But, anyway, you spoke to him up there on the third floor that evening?

A. I spoke to him on the elevator.

Q. When you were going up?

A. Yes, sir.

Q. Well, what did you say to him?

A. Well, he—I just—he asked me did—something about

Q. What did he ask you?

A. I think something about the case. This case.

Q. Well, what did you tell him?

A. I didn't tell him anything. I just—I don't remember telling him anything, I don't believe.

Q. You didn't answer him? You said he asked you a question—you didn't answer him? You'd been knowing Dudley a long time, hadn't you?

A. Yes, sir. He just said, "What have you done got into?" That's all I remember him asking me.

Q. Did you answer him?

A. I just said, "Nothing," just like that.

Q. Now, on this occasion he wasn't talking to you extra loud any way, was he?

A. No, sir.

Q. He was talking to you completely nice, wasn't he?

A. Yes, sir.

Q. And you, in return, whatever you said was nice?

A. Yes, sir.

Q. Now, Dudley didn't try to hit you or beat you or say anything to you, did he?

A. No, sir.

[fol. 179] Q. And you say you saw him there and then went in the jail cell? Is that right?

A. Yes, sir.

Q. Now, later on you said you talked to the sheriff, I believe you said it was, in the jail cell up there?

A. Yes, sir.

Q. Sheriff Lee didn't holler at you or talk loud, did he?

A. No, sir.

Q. Did he talk to you as nice as I'm talking to you?

A. Yes, sir; he talked all right.

Q. He didn't beat you, did he?

A. No, sir.

Q. Then I believe you testified you went down in the interview room—in the office where he talked to you? Is that right?

A. Yes, sir.

Q. While you were in that office I believe you stated that Mr. Jones and Sheriff Lee and some other people were in there? Is that right?

A. Yes, sir.

Q. Did any of those people holler at you loud?

A. No, sir.

Q. Did any of them talk loud to you at all? Didn't they talk to you just like I'm talking to you now?

A. Well, if I was to say that I would be telling a lie.

Q. Did anybody beat you while you were in there?

A. No, sir; they didn't beat me, but they kind of scolded me a little. They didn't beat me or nothing.

Q. Nobody beat you or anything of that nature? That's right, isn't it.

A. Yes, sir.

[fol. 180] Q. Nobody hollered at you, did they?

A. No, sir; they didn't holler at me.

Q. All right, nobody threatened you that they were going to beat you, did they? Did anybody threaten you?

A. No, sir.

Q. What they did was Sheriff Lee asked you some questions didn't he?

A. Yes, sir.

Q. And you don't remember all the questions he asked you, do you?

A. No, sir.

Q. But he did ask you some questions concerning molesting a girl over at St. George—in that area—didn't he?

A. Yes, sir.

Q. And when he asked you those questions I believe you said Mr. Dudley Jones here had a pen and writing it down? Is that right?

A. Yes, sir.

Q. And in some of those questions he told you you had a right to have a lawyer if you wanted one, didn't he?

A. Well, if he did I don't remember.

Q. You won't say that he didn't tell you that, will you? You just don't remember? Is that right?

A. Like I told you, I don't remember.

Q. You don't remember?

A. No, sir.

Q. And you wouldn't say that he didn't tell you that whatever you said could be used against you in court, would you?

A. I remember him saying that.

Q. You remember him advising you that whatever you said could be used against you in court? You remember that? Is that right?

[fol. 181] A. Yes, sir.

Q. That's one of the several things Sheriff Lee told you? Is that right?

A. Yes, sir.

Q. And even though you knew that it could be used against you in court, he asked you questions and you went ahead and told him about it? Is that right?

A. Well, I told him some things.

Q. And when you got through telling Sheriff Lee those things and after Mr. Jones got through writing it down they asked you to read it, didn't they?

A. Asked me to read it?

Q. Yes.

A. No, sir; Mr. Dudley Jones knows I can't read it.

Q. Didn't he ask you to read it?

A. No, sir. He read it.

Q. All right, you say that he didn't ask you to read it—that he read it to you?

A. Yes, sir.

Q. Did he take his time to read it to you?

A. Well, I don't know. He just read it. I don't know how he took his time.

Q. Well, did he read it to you in just a normal, ordinary way?

A. Yes, sir.

Q. And you listened to it good while he was reading it, didn't you?

A. Yes, sir; I was listening.

Q. And when he got through reading it, you signed it, didn't you?

A. Yes, sir.

Q. Did you tell him that any part of that was wrong? Did you tell him that any portion of that statement was wrong that he read to you.

[fol. 182] A. I imagine I would if I had knowed what he was doing?

Q. He read it to you, didn't he?

A. Yes, sir.

Q. And when you heard him read it you signed it because that was right, didn't you?

A. I reckon so.

Q. And if he had read you something he hadn't told him you wouldn't have signed that, would you?

A. I don't know. I imagine I would. I don't know.

Q. You don't know whether you would or not if he had read you something wrong? Let me ask you this: Mr. Dudley has been treating you all right and been friendly to you?

A. Yes, sir.

Q. And Mr. Dudley has been friendly to you for how many years?

A. About twelve or thirteen, I imagine.

Q. All right, if he was friendly to you for twelve or thirteen years you weren't afraid of him, were you?

A. No, sir; I ain't never said I was scared of him.

Q. And so if something had been wrong you wouldn't have been afraid to tell him it was wrong, would you?

A. No, sir.

Q. So, there wasn't anything wrong with what he read off, because if it had been you would have told him because you weren't scared of him? Is that right?

A. No, I wasn't scared.

Q. And if he had read something wrong that you hadn't said, since you weren't scared of him you would have said, "Mr. Dudley, that ain't right," and you would tell him, "It ought to be this way," wouldn't you?

A. I imagine I would.

[fol. 183] Q. Now, not only didn't the sheriff or the deputy sheriff, Mr. Jones, do anything to you, but those other men there, did they bother you in any way—that were in the room? Did any of them fight at you or threaten you?

A. No, sir. They was all setting down.

Q. They didn't say anything to you, did they?

A. No, sir.

Q. As a matter of fact, nobody while you were in Ware County hit you or beat you up, did they?

A. No, sir.

Q. Nobody tried to raise their voice and holler at you or do anything to you, did they?

A. Not them.

Q. Well, did they ever do it in Ware County? Did anybody ever bother you?

A. They ain't nobody ever hit me there, but I ain't going to say they didn't never holler at me.

Q. I'm talking about when you were making the statement—they weren't hollering at you, were they?

A. Oh, no.

Q. If somebody hollered at you it was somebody out of the window later on, wasn't it?

A. Didn't anybody holler at me out of the window, no

more than my people sometimes hollered at me out of the window.

Q. Now, I believe you said you didn't remember whether or not he told you you had a right to get you a lawyer or not? Is that right?

A. No, sir.

Q. You don't remember whether he did say it or didn't say it?

A. No, sir.

Q. He didn't refuse you the right to use the telephone? Did you ask him to use the telephone and he wouldn't let you?

[fol. 184] A. I didn't never ask him.

Q. In other words, as far as you know if you had wanted to use the phone you could have used it? Is that right?

A. I don't know if he would or not.

Q. I mean as far as you know, since he didn't refuse you?

The Defendant's Attorney: I think he answered the question, your Honor.

The Court: I think so.

The Solicitor General: That's all.

Redirect examination.

Q. (By the Defendant's Attorney) Isaac, did you consider Mr. Dudley a friend of yours?

A. Yes, sir.

Q. Did you think that he would help you?

A. Yes, sir; I believe he would.

Q. Isaac, when you were in the sheriff's office of Ware County were you afraid?

A. Yes, sir; I was—I was scared a little.

Q. Do you know what "normal" and "ordinary" mean, Isaac?

A. Normal and ordinary?

Q. Yes.

The Solicitor General: Your Honor, that would be a conclusion, and so on. I don't see what the purpose of that question is. I haven't objected before, but he could go all through the dictionary and ask him what words mean.

The Court: Let him answer the question.

Q. (By the Defendant's Attorney) Do you know what "normal" and "ordinary" mean, Isaac?

A. Like you're sick, or something?

Q. Is that what it means to you?

[fol. 185] A. I imagine so, yes, sir.

Q. Isaac, did you know you had a right to use a telephone?

A. Yes, sir.

Q. Who told you?

The Solicitor General: I object to that, your Honor. He's answered the question. The last question would be calling for hearsay, anyway. It doesn't make any difference so long as he knew.

The Defendant's Attorney: Your Honor, I have a right to inquire as to the source of his knowledge.

The Solictor General: It would be a self-serving declaration. If he knew, nothing else would be pertinent.

Q. (By the Defendant's Attorney) Do you understand my question, Isaac?

A. You say do I have a right to use the telephone?

Q. Yes.

The Solicitor General: I think he already asked the question and he's answered it. Now, he wants to go back and elicit another answer.

The Defendant's Attorney: I asked him if he understood the question, your Honor.

The Solicitor General: He's trying to cross examine his own witness now.

The Court: Go ahead with the question.

Q. (By the Defendant's Attorney) The question is did you understand the question about your right to use the telephone while you were in jail?

A. No, sir.

Q. Did anyone tell you you had a right to use the 'phone while you were in jail?

A. No, sir.

[fol. 186] The Solicitor General: I ask that that be excluded because it's obvious that he rephrased the question and re-asked it for the purpose of getting a different answer from him. The question was clear and answered clearly,

and when he re-asked the question it was for the sole purpose of getting him to change the answer.

The Defendant's Attorney: Your Honor, that doesn't state a legal reason to exclude it.

The Court: Well, go ahead with the questions.

The Defendant's Attorney: That's all.

The Solicitor General: Come down.

(Witness excused)

The Defendant's Attorney: The defendant rests.

The Solicitor General: Your Honor, we are not offering anything. We have finished.

The Court: Are you through?

The Defendant's Attorney: I have another motion, your Honor.

The Court: Another motion?

The Defendant's Attorney: Yes, sir; an oral motion.

The Court: All right.

MOTION TO QUASH INDICTMENT AND OVERRULING THEREOF

The Defendant's Attorney: Your Honor, we move that this indictment No. 1488, which was returned by the grand jury of Charlton County on October 6, 1964, be quashed, the reason being that this indictment puts the defendant, Isaac Sims, Jr., in double jeopardy, in violation of his rights under Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945, and under the 5th Amendment to the Constitution of the United States, being applicable to the State of Georgia by the 14th Amendment thereto, by virtue of the fact that the Supreme Court of Georgia in the Isaac Sims case sent the case back for [fol. 187] retrial on the indictment then pending against the defendant, and the defendant has subsequently been indicted a second time, and the Constitution of both the United States and of the State of Georgia say that a man shall not twice be put in jeopardy for the same offense, and the return of the second indictment—there are two indictments in the case, and the return of the second indictment is improper. He was sent back to be tried on the original indictment, not to be tried on the indictment that was returned yesterday. The Supreme Court of Georgia specifically directed that this defendant be given a new trial,

and we'd like to enter in evidence on this the present indictment, which is 1488, and w'ed first like to have the Clerk produce and make a part of the record the remittitur from the Supreme Court of Georgia sending the case back to the City Court of Reidsville, which should have sent the case back to this court as a part of the record. It was sent back for retrial of the indictment which was originally returned against him. The issue of whether or not they were systematically and arbitrarily excluding negroes from the jury was not the issue passed upon. As a matter of fact, the Supreme Court Justices specifically rejected that issue and refused to consider it in this opinion, and this defendant is being put in double jeopardy, because he is not being tried on the same indictment, but he is being tried on a new indictment, and the law provides that when a defendant appeals a case and the case is returned he should be sent back and tried on the same indictment. It does not provide that he can be re-indicted and tried on a different indictment, and, your Honor, we move that the indictment be quashed against the defendant—No. 1488—for the reasons previously stated.

The Court: (After argument of counsel) I will overrule the oral motion.

[fol. 188] The Defendant's Attorney: Your Honor, the Court has reserved its ruling on evidence that we offered on the challenge to the array and the plea in abatement going to the composition of the petit jury, and I'd like to call this to the Court's attention; and also, your Honor, I'd like to call to the attention of the Court on the motion for the change of venue which the Court has already ruled upon as to the venue change aspect of the motion, but I'd like to call the Court's attention that we prayed in that motion as follows: "The movant prays that his motion be inquired into (which the Court, of course, has done) and that the Court enter an order changing the venue for the trial of said indictment (which, of course, the Court has declined by overruling the motion)," and then we go on and say "in the alternative grant such other relief or order as will secure to the movant a jury and forum uninfluenced by local prejudice and bias."

Your Honor, we ask the Court to consider several possible alternatives—First, to increase the size of the venire in the case. The present venire is about 99 jurors. To in-

crease the size of the venire so that the defendant would have a wider choice and a wider section of the community to be represented on the jury panel; and, secondly, we ask the Court to admonish any jurors that have actually been impaneled not to discuss the case, and to disregard any newspaper items or any hearsay evidence; and, thirdly, that the jury from the time it is impaneled be kept together and not permitted to return home until the case is terminated.

Those are our alernatives, your Honor. They are not all the alternatives, but we'd like to suggest wherever we could to the Court and be as helpful as we possibly can to the Court.

The Solicitor General: I feel that the Court is highly [fol. 189] capable of running the case, and the State wouldn't have any suggestions.

The Defendant's Attorney: Your Honor, we didn't intend to imply any lack of capacity of the Court.

OVERRULING OF MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE

The Court: Now, as to your other motion—the motion to suppress illegally obtained evidence—I overrule that motion, too.

All right, now, what is next?

The Solicitor General: Ready to join issue so far as I'm concerned.

The Court: Do you want a ruling on these?

The Defendant's Attorney: Yes, sir. I think it would clear the record in case there was an appeal.

The Court: What you are talking about there is what? What are you talking about?

The Defendant's Attorney: Your Honor, we're speaking of Defendant's Exhibits 5, 6, 7, 8, 9, 10, and 17, and Defendant's Exhibits 11, 12, 13, 14, 15, and 16, which were offered in support of defendant's plea in abatement and challenge to the array, which the Court reserved ruling upon at the time they were offered.

The Court: I will rule them inadmissible.

The Defendant's Attorney: Your Honor, will you make that ruling part of the record in the case?

The Court: Are you ready now?

[fol. 190] ACKNOWLEDGMENT OF SERVICE

[omitted in printing]

JUDGE'S CERTIFICATE

I hereby approve and certify that the within and foregoing pages, numbered 1 through 121, constitute a true, correct, and complete transcript of the evidence taken upon the trial of the defendant's special pleas and motions as had before me in the above-captioned case commencing on October 7, 1964, and are approved as a part of the record herein.

This, the 15 day of January, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 191] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

OCTOBER TERM, 1964.

CHARLTON SUPERIOR COURT

No. 1488

THE STATE

vs.

ISAAC SIMS, JR.

INDICTMENT FOR RAPE

TRANSCRIPT OF EVIDENCE

The Court: You may proceed with the trial.

MRS. NOLA JEAN ROBERTS CRAWFORD was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Would you state your name for the record, pleace?
A. Nola Jean Crawford.
Q. Are you the former Nola Jean Roberts?
A. Yes, I am.
Q. You were Nola Jean Roberts back on April 3, 1963? Is that correct?
A. Yes, sir.
Q. Now, where did you live at that time, Nola Jean?
A. St. George, Georgia.
Q. St. George, Georgia?
A. Yes, sir.
Q. If there is no objection I'll just call you Miss Roberts.
A. All right.
Q. Where did you live at that time in reference to St. George?
A. Three miles out of St. George towards Folkston on the St. George road.

Q. And what county was that in?
A. Charlton County.
Q. And what State was it in?
[fol. 192] A. Georgia.
Q. Now, who did you live with at that time, Nola Jean?
A. My parents.
Q. And who are your parents?
A. Lonnie and Vera Roberts?
Q. And you lived in the home with them? Is that right?
A. Yes, sir.
Q. Now, did anything unusual happen to you on or about the 13th day of April last year?
A. Yes, sir.
Q. Nola Jean, where were you around ten o'clock on that Saturday morning of April 13, 1963?
A. I was coming from St. George going home.
Q. You'd been to St. George?
A. Yes, sir.
Q. And you left St. George going home—how would you have to go from St. George to get to your home?
A. Come out three miles on the St. George-Folkston road.
Q. Is that a paved road?
A. Yes, sir. And turn to the left and go one mile and around one-tenth.
Q. Is that a dirt road, Nola Jean?
A. Yes, sir.
Q. Now, from the paved road to your house, is that a straight road or is there a curve in it.
A. There is a curve in it.
Q. Now, Nola Jean, you said you left St. George going home—how were you traveling?
A. In a car.
Q. Now, what kind of car were you driving?
[fol. 193] A. A Dodge Lancer.
Q. Was anyone with you?
A. No, sir.
Q. Now, since you were by yourself you were driving?
A. Yes, sir.
Q. Nola Jean, on that occasion when did you first notice something unusual?
A. Well, after I got around a curve I heard a——

Q. Excuse me, Nola Jean. Was there anything unusual on the paved road?

A. No, sir.

Q. You turned off of the paved road and started on the dirt road? Is that right.

A. Yes, sir.

Q. Now, what about in relations to that curve you referred to on the dirt road between the paved road and your house did something happen?

A. Well, just as I got out of the curve I heard a racket behind me, and I looked in the rear view mirror and I saw a car coming behind me, and the car was coming pretty fast, and he hit—the car hit the left side of my car and swerved it towards the right side of the road, and it hit again and knocked me out in the ditch and turned me completely around headed back towards the highway.

Q. Now, Nola Jean, your car, I believe you said, was knocked in the ditch and wrecked? Is that right?

A. Yes, sir.

Q. Immediately upon your car being knocked in the ditch what happened then?

A. A colored man jumped—had got out of his car, came to mine, opened the door and pulled me out.

[fol. 194] Q. Now, Nola Jean, was that colored man the person driving the car that ran into the back of yours?

A. Yes, sir.

Q. Now, you say he came to your car and pulled you out —what did he say, if anything, at that time?

A. He asked me if I had any money.

Q. What did you tell him?

A. I told him, "Yes."

Q. What happened then?

A. He looked in my billfold, took what money I had in there out—in the bill fold out—and that's all that happened at that time.

Q. Now, at this particular point and place we have reference to in that particular area, is that in Charlton County, Georgia?

A. Yes, sir.

Q. Now, about how far was that from your house at that time?

A. I'm not sure.

Q. Would it be approximately a half a mile?

A. I think so, yes, sir.

Q. Now, after he pulled you out of the car, Nola Jean, and got the money and pulled you on out of the car, tell the jury exactly what happened then. What did you do then when he was pulling you out, Nola Jean?

A. Well, I was very scared and I told him my money was in my bill fold and he took the money out, and then he got behind me and started pushing me towards the woods, and I kept hollering for help and he kept putting his hand over my mouth and told me to shut up or he'd kill me, and he kept doing that, and then after he got me a ways in the woods he pushed me onto the ground and pulled my clothes —pants—off of me and raped me, and he kept choking me.

Q. Now, Nola Jean, when you say "raped," he actually put his private parts in your private parts?

[fol. 195] The Defendant's Attorney: We object to that, your Honor. That is a most leading question, and I object to the form of the question.

The Court: All right.

Q. (By the Solicitor General) Well, I will ask you did he do that? Did he put his private parts in your private parts?

A. Yes, sir.

Q. And in the meantime while he was doing that how had he treated you in the way of violence, if any?

A. He kept choking me.

Q. He kept choking you?

A. Yes, sir.

Q. And while he was choking you what would he say, Nola Jean?

A. Every time I would ask him to please stop he would tell me to shut up or he would kill me.

Q. And what happened as soon as he completed raping you? What happened next?

A. He choked me one more time, and as he did I blacked out.

Q. Nola Jean, did you resist with all your power?

A. Yes, sir; I did.

Q. And I believe you just stated when he finished raping you that he choked you and you blacked out again?

A. Yes, sir.

Q. And do you remember anything of the way he departed the scene after that?

A. He ran off in the woods.

Q. And what direction in relation to the road, if you know, Nola Jean?

A. Off on the road going towards Toledo—back off.

Q. I didn't hear you.

A. Going towards Toledo.

Q. And what did you do then, Nola Jean?

[fol. 196] A. I managed to get to the car when I got my clothes back on—I had went to the car and managed to get the mail and the car key.

Q. Would your car run, Nola Jean?

A. No, sir.

Q. You don't know about the other car, do you?

A. I don't know about the other car. And I had went home. I had walked to my house.

Q. Nola Jean, don't tell what anybody else said, but when you were getting to your house what were you doing, if anything?

A. I called my mother as soon as I was close enough to the house that she could hear me, I called her and she came out where I was at.

Q. Did you go on in the house then?

A. She took me on in the house.

Q. When you got in the house whereabouts in the house did you go?

A. I laid down on the couch in the living room.

Q. And did you stay there on the couch a little while in the living room?

A. Yes, sir.

Q. Nola Jean, what happened after then?

A. Well, while I was on the couch my mother called Bob Adkins and they came down.

Q. Is that an ambulance?

A. Yes, sir. And they came down to get me and took me to the hospital.

Q. Now, you went to the hospital in the ambulance?

A. Yes, sir.

Q. What hospital did you go to, Nola Jean?

A. McCoy-Jackson Hospital here in Folkston.

[fol. 197] Q. And that was on Saturday, I believe?

A. Yes, sir.

Q. How long did you stay in the hospital as a result of this attack on you.

A. Around a week.

Q. And, Nola Jean, the colored man that raped you on that occasion, do you see him in the court room?

A. Yes, sir.

Q. Would you point at the man that raped you?

A. Over here at the second table (indicating).

The Solicitor General: Let the record show that she's pointing at the defendant, Isaac Sims, Jr., as being the man that raped her.

Q. Nola Jean, at the time that you were attacked by this man what was your physical condition in relation to periods, and so forth?

A. I was just ending my period.

Q. What type of clothes were you wearing? Tell the jury what you had on.

A. I had on a pair of long slacks, a girdle, a pair of underpants, and a guard.

Q. And what did you say happened to your clothes when you were raped?

A. He pulled them off.

Q. Now, Nola Jean, all the time that he was pulling you out and raping you just what was he doing? Tell the jury what he was doing and what he was saying?

A. I was trying to get away from him and I kept hollering for help and trying to get away from him, but he kept putting one hand over my mouth, and he had one arm around me, holding me.

Q. You said a while ago he kept saying something—what did he keep saying at the time he was pulling you out and raping you?

[fol. 198] A. He kept saying he would kill me.

Q. And you said all this happened in Charlton County, Georgia?

A. Yes, sir.

The Solicitor General: She's with you.

Cross examination.

Q. (By the Defendant's Attorney) Miss Roberts, you are now Mrs. Crawford, aren't you?

A. Yes, sir.

Q. How long have you been married?

A. Since December the first, 1963.

Q. Were you engaged at the time this allegedly happened?

A. No, sir, I wasn't

Q. You became engaged since then?

A. Yes, sir.

Q. Do you now live in Charlton County?

A. Yes, sir; I do, with my family.

Q. On the Lonnie Roberts road?

A. Yes, sir.

Q. Now, I think you testified that this allegedly happened on the paved road—the Lonnie Roberts Road—that leads from 23 to your house?

A. No, it happened on a dirt road.

Q. It happened on a dirt road?

A. Yes.

Q. Is that the Lonnie Roberts road?

A. Yes, sir.

Q. That road is named after your father?

A. It isn't named after my father, no, sir.

Q. Why is it called the Lonnie Roberts road?

A. I couldn't answer that?

Q. But it is called that?

A. I don't know. I have heard that.

[fol. 199] Q. And this road, would you say, is about maybe twelve feet wide?

A. Probably.

Q. And it is a sort of white sandy road?

A. Yes, sir.

Q. And there are gullies on each side?

A. Yes.

Q. Actually, the road leads into the Okefenokee Swamp, doesn't it?

A. No, sir; it doesn't.

Q. It's in the area where the swamp is, isn't it?

A. Well, the swamp is on further up.

Q. When you turn left off of the paved road, which is

Highway 23, onto the dirt road, that road goes on out towards the swamp past your house, doesn't it?

A. It stops—it just passes my house.

Q. And beyond the house it curves around your house to the swamp road?

A. Yes.

Q. There are two curves on this road, isn't there?

A. One curve.

Q. You turn left and you go down the road a way and then you turn back, don't you?

A. There's a curve towards the right.

Q. And then it straightens up and curves back toward the left?

A. Yes.

Q. And right beyond that last curve there's a bridge, isn't there?

A. Well, it's kind of straight going towards the bridge.

Q. But there's a bridge there?

A. Yes.

Q. And I think you've testified on each side of the road there's a gully and there are pine trees? Is that right?

[fol. 200] A. Yes.

Q. And there's a lot of other heavy foliage?

A. Yes.

Q. And in a lot of areas there there's moss, isn't there?

A. Well, not exactly moss. There's heavy foliage.

Q. And sort of watery and slippery?

A. No.

Q. Had it rained at any time within a day or so before this event occurred?

A. No.

Q. Did it rain on the 13th day?

A. No.

Q. Now, I believe you testified that you heard a racket behind you—there was a car coming behind you that was making a racket.

A. Yes, there was.

Q. And that you looked in the rear view mirror?

A. Yes.

Q. Did you believe then that the car was going to try to run into you?

A. No, sir; I didn't.

Q. You knew that there wasn't quite enough room on the road for it to pass, didn't you?

A. Yes.

Q. Why didn't you speed up?

A. Well, I didn't think about speeding up.

Q. And your car was a 1963 Dodge Lancer, wasn't it?

A. Yes.

Q. The car that was behind you was a 1954 Chevrolet; wasn't it?

A. I don't know.

Q. Anyway, it was an old car, wasn't it?

A. Yes, it was.

[fol. 201] Q. And you knew it was an old car because you could hear it run? Is that right?

A. Yes.

Q. But you didn't speed up, did you?

A. No, I didn't.

Q. Did you later on have your car repaired?

A. No, sir; I didn't.

Q. You never had it repaired?

A. No.

Q. And your car was knocked around twice? Is that right?

A. Yes, it was.

Q. Now, Mrs. Crawford, I hate to ask a lady this, but approximately how old were you at the time this happened?

A. Twenty-nine.

Q. And I'd like to ask you another question: Approximately how much did you weigh at the time this happened?

A. Around about 160 or 65.

Q. Would you say that you weigh now pretty much what you weighed back on April 13, 1963?

A. No, sir; I don't. I'm heavier.

Q. You're heavier now?

A. Yes.

Q. Now, Mrs. Crawford, the first time that you identified Isaac Sims, Jr., as the person who allegedly attacked you was in this court room last October, 1963, wasn't it?

A. Yes, it was.

Q. And that was over a space of some five months? Is that right?

A. I guess so.

Q. Now, Mrs. Roberts, you had seen Isaac near where you lived before, hadn't you?

A. I'm sure I had.

[fol. 202] Q. Isaac used to haul pulpwood? Is that right?

A. Yes, sir.

Q. And there's a church near where you live, isn't there?

A. There's a church and a cemetery.

Q. And you've seen Isaac on occasions when he was working pulpwood and drive by the church and cemetery, haven't you?

A. No, I didn't see him very much.

Q. But you believe that you've seen him in the past when he was working on the pulpwood truck? Is that right?

A. Yes, sir.

Q. But, if you have your testimony correctly, the first time you identified Isaac Sims as the person who allegedly did this to you was in October of 1963? Is that correct?

A. Yes, sir.

The Defendant's Attorney: Thank you.

The Solicitor General: You may come down.

(Witness excused)

Mrs. Lonnie Roberts was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) You are Mrs. Lonnie Roberts?

A. I am.

Q. What relation are you to Nola Jean Roberts Crawford?

A. My daughter.

The Defendant's Attorney: Excuse me, Mr. Solicitor, but we will stipulate, your Honor, that this lady is the mother of Nola Jean Roberts, and that she saw her on April 13, 1963, in a disheveled and bruised up condition.

The Solicitor: It won't take but a minute or two. I want her to tell the jury just like it was.

Q. Mrs. Roberts, you are the mother of Nola Jean Rob-
[fol. 203] erts Crawford?

A. I am.

Q. And you remember the occasion back on April 13, 1963, when something happened to your daughter?

A. I won't forget it.

Q. Now, Mrs. Roberts, about what time of the day and where were you when you found out something was wrong on that occasion?

A. I was at home.

Q. And about what time of day was it, Mrs. Roberts?

A. It was around 11:30, I think. Somewhere about 11 or 11:30.

Q. That was in the morning?

A. In the morning.

Q. Mrs. Roberts, where was your daughter, Nola Jean, when you first discovered there was something wrong?

A. Coming up the lane toward the house.

Q. And would that be from the direction of the highway?

A. Yes.

Q. And what was she doing when you first observed her and noticed there was something wrong?

A. Well, she could hardly walk, and she called me and I heard her call, and I went to the door to see why she was calling me, and I saw her up the lane and it was all she could do to walk, and I ran to her, and her face was streaming blood and it was all swollen and red, and she was just bruised and dirty. Her clothes were in a terrible condition; and I asked her what was the matter, and she says, "I'll tell you when I get to the house," and I went onto the house, carried her in, and I laid her down on the sofa in the living room, and I went to the bath room and got a wash cloth to wash her face, because I thought possibly she'd been in an automobile wreck; and I asked her what happened to her, and she said a colored man ran her in the
[fol. 204] ditch; and I said, "Where is he?" She said, "He ran through the woods", and her father asked her, "Did he do anything to you?" And she said, "Yes," and I went to the telephone to try to call help.

Q. Did you try to call the law at that time, Mrs. Roberts?

A. I tried to call the law.

Q. Who else did you try to call?

A. And I didn't get anybody to answer the 'phone at that particular time, and I called Adkins Funeral Home to come get an ambulance and bring me to the hospital, and as soon as I called him I called Dr. Jackson and asked him what to do for her until I got her up there, and he told me to bring her just like she was and not do anything until she got over there—to keep her warm, and I called the law and I got hold of them at that time.

Q. Where was she during this time, Mrs. Roberts?

A. She was lying on the sofa in my room—in my living room.

Q. Did the ambulance come then?

A. They came immediately just as fast as they could come.

Q. When the ambulance arrived at your house what happened then?

A. Well, they took her and put her in the ambulance and I rode with her and they brought her over to Folkston to the hospital.

Q. What doctor did you bring her to, Mrs. Roberts?

A. Dr. Jackson.

Q. And what hospital was she brought to?

A. McCoy-Jackson Hospital.

Q. As a result of that attack how long did she stay in the hospital?

A. She was in there until the following Friday.

Q. From that Saturday until the following Friday?

A. From Saturday until the following Friday.

[fol. 205] The Solicitor General: She's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mrs. Roberts, I want to ask you a couple of questions, please. I believe that you testified that your daughter came—you saw your daughter outside the house, and that you asked her what had happened, and she said she'd been in a wreck? Is that right?

A. She told me that when she came in the house. Not outside.

Q. Inside the house she told you she'd been in a wreck. Is that right?

A. She said a colored man ran her into the ditch.

Q. Yes, the colored man had run her into the ditch. Now, Mrs. Roberts, where was your husband at this time?

A. My husband was at home.

Q. Was he in the same room with you and your daughter?

A. Yes.

Q. Then your husband inquired, and then she told that the colored man had done something else? Is that right?

A. Yes.

Q. All that you know about what happened is what your daughter told you? Is that correct?

A. That's all.

The Defendant's Attorney: That's all.

Redirect examination.

Q. (By the Solicitor General) You saw your daughter and her condition at that time, didn't you?

A. I saw her condition and I know what she went through —I mean I know what condition she was in.

Q. And that condition is what you just explained to the jury? Is that right?

A. That's right.

[fol. 206] Q. What about her eyes at that time, Mrs. Roberts?

A. It took two weeks for the blood to get out of her eyes. You couldn't see her eyes for the blood.

Q. What about the other parts?

A. And her nose was bleeding and her mouth was bleeding—streaming down her face, and her clothes were all bloody, and she was in a frightful state.

Q. And she told you she was run in the ditch and then she told you she was was raped? Is that right?

A. Yes.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Mrs. Roberts, you understand that I'm just trying to get at the truth?

A. Well, this is the truth.

Q. I realize that. Mrs. Roberts, the only thing that you're testifying about as to how this happened is what your daughter told you? Is that right?

A. I'm testifying to her condition as I saw her and what she told me.

Q. But you don't know how she got in that condition, do you?

A. No, I didn't see it, if that's what you mean. I wasn't there.

The Defendant's Attorney: That's all.

(Witness excused.)

Noah Stokes was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) You name is Noah Stokes?

A. Yes, sir.

Q. Where do you live, Mr. Stokes?

[fol. 207] A. I live at Toledo.

Q. What county is that in?

A. Charlton County.

Q. Mr. Stokes, do you know one T. W. Walker?

A. Yes, sir.

Q. Do you know Arthur Lee Walker?

A. Yes, sir.

Q. Do you know Isaac Sims, Jr., the defendant in this case?

A. Yes, sir.

Q. Mr. Stokes, do you remember the occasion back on April 13th, 1963, when Nola Jean Roberts at that time was attacked?

A. Yes, sir.

Q. Now, Mr. Stokes, where do you live in relation to Folkston and St. George?

A. Well, it's fifteen miles—well, it's about seventeen miles south of Folkston.

Q. Where is that in relation to St. George?

A. About five miles north of St. George.

Q. I will ask you, Mr. Stokes, do you know Nola Jean Roberts?

A. Yes, sir.

Q. How long have you been knowing Nola Jean Roberts, who is now Nola Jean Crawford?

A. Well, I'd say all her life.

Q. Approximately how long have you known the defendant, Isaac Sims, Jr.?

A. I barely know him.

Q. Mr. Stokes, now, back to the occasion, don't tell what was said, but did you receive a report about Nola Jean being attacked?

The Defendant's Attorney: I object to that, your Honor. That's a leading question.

[fol. 208] The Solicitor General: I will withdraw it.

The Court: All right.

The Solicitor General: I will withdraw the question.

Q. You stated that you knew about the occasion? Is that right?

Yes, sir.

Q. Now, when you knew about the occasion, did you know about it on the day that it happened?

A. Yes, sir.

Q. About what time of the day did you learn about that, Mr. Stokes?

A. I'd say between 11:30 and 12 o'clock.

Q. Now, what did you do, if anything, when you learned about the occasion when Nola Jean was attacked?

A. I went out to what we call the Lonnie Roberts road where they claimed that the attack had happened, and I saw Homer Allen out there.

Q. Now, don't tell what was said. Go ahead.

A. And then I came back and went back to our quarters where we had colored people living working turpentine.

Q. Now, what do you call that quarters, Mr. Stokes?

A. We call that Toledo.

Q. All right, sir. Then what did you do?

A. Well, I went to several of the houses—I wouldn't know—two or three or four of them—and told them what had happened, and that if a strange man came in there—I didn't know who they were looking for, but if a strange man came in there to be sure and tell me—to let me know.

Q. On that occasion that you have just referred to, Mr.

Stokes, did you talk to one T. W. Walker and one Arthur Lee Walker on that day?

[fol. 209] A. Yes, sir.

Q. I believe you said that you went into the quarters about 11 or 11:30 that day?

A. Well, it was about 12.

Q. Around 12?

A. Yes.

Q. After you had seen the Walkers and talked to them and the other people, did you see either one of the Walker boys later that day?

A. Yes, about 3:30 that afternoon.

Q. Which one did you see?

A. I saw both of them.

Q. Which one did you see first?

A. Well, I saw T. W. first.

Q. And when you saw T. W., don't tell what he said, but did he give you a message.

A. Yes.

Q. When he gave you this message what did you do, Mr. Stokes, in relation to that information? Tell what you did, now.

A. Well, I went to T. W.'s house.

Q. T. W. who, for the record?

A. How's that?

Q. For the record, T. W. Walker?

A. T. W. Walker—his house.

Q. And he lived at Toledo?

A. Yes, sir.

Q. And about what time did you go to his house, Mr. Stokes, if you know—approximately what time?

A. 3:30—something like that.

Q. And when you got to his house who did you see or what did you do at that time, Mr. Stokes?

[fol. 210] A. Well, Isaac Sims was sitting on the porch with his feet down on the ground.

Q. And who was there at that time besides Isaac Sims?

A. Well, there was so many I don't remember. I'd say there was eight or ten or twelve or fourteen people around there.

Q. All of them colored or white?

A. All of them colored.

Q. All of them colored, and you were the only white person there?

A. A fellow or two went with me.

Q. But the rest of them were colored people?

A. Yes, sir.

Q. Now, were T. W. Walker and Arthur Lee Walker there?

A. Yes, sir.

Q. And when you saw Isaac Sims, Jr., there at that time what did you do, if anything, at that time, Mr. Stokes?

A. I just drove the car up and opened the door and got out and told him to get in, and he got in.

Q. And what did you do then?

A. I carried him back to the highway, about a half a mile, and then my brother-in-law came and I told him to go get the sheriff, and he went on out in the woods where the crowd was, and pretty quick two patrolmen came up there and got him.

Q. And you turned him over to the two State Patrolmen?

A. Yes, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mr. Stokes, approximately how far is Toledo from the Lonnie Roberts road?

A. Well, it's, I'd say, 5 or 5½ miles.

[fol. 211] Q. About 5½ miles?

A. Well, where the road turns off of the highway it wouldn't be over 4½ or 5.

Q. You say where the road turns off the highway—do you have reference to Highway 23?

A. That's right.

Q. And the road that turns off the highway is the Lonnie Roberts road?

A. Well, that's what we call it. It goes to Mr. Lonnie Roberts' house.

Q. Where the Lonnie Roberts road runs into the Highway 23 it's about 5 or 5½ miles to Toledo? Is that right?

A. 4½ or 5, or something like that.

Q. In which direction is Toledo with respect to the intersection of the Lonnie Roberts road and Highway 23?

A. Well, it's between the Lonnie Roberts road and Folkston, south, back this way—Toledo is.

Q. Coming up to Folkston? Is that right?

A. That's right.

Q. Now, is there any other highway or road that you know of that leads from the intersection of the Lonnie Roberts road and Highway 23 to Toledo?

A. Any other intersection into it?

Q. Well, let me put it this way, Mr. Stokes: Now, at the intersection of the Lonnie Roberts road, the dirt road, and Highway 23 are there any other roads that lead up to Toledo other than Highway 23?

A. Not coming to Toledo, no.

Q. If one was on the Lonnie Roberts road he'd have to come up Highway 23 in order to get to Toledo? Is that right?

A. Well, or go through the woods. There's a firebreak [fol. 212] road that runs out in the woods, but between the river and the Okefenokee that's the only road.

Q. I didn't get that, sir. You said between the river and the Okefenokee?

A. And 23.

Q. And what river is that?

A. St. Marys River.

Q. The St. Marys River?

A. Yes.

Q. So, Toledo is between the St. Marys River and Highway 23? Is that correct?

A. Yes—it's on 23.

Q. Now, you stated there are some woods in this area—could you describe the area generally from the Lonnie Roberts road up to Toledo?

A. Well, it's just woods and firebreaks—what we call firebreaks. Truck trails that go off in the woods, but there's one road that goes up to the Crews between my house, and I live between the Lonnie Roberts road and Toledo.

Q. Is there any other road?

A. Well, I'd say there's nothing but firebreak roads.

Q. And firebreak roads are little roads that come into the main road from the woods? Is that right?

A. Yes.

Q. In other words, they don't run in the same direction as Highway 23?

A. No.

Q. Now, not only do you have trees out there in the woods, but you have heavy foliage, don't you?

A. Yes.

[fol. 213] Q. And there's a lot of weeds and stuff growing underneath the trees and things of that sort? Is that right?

A. Well, there's little bushes and gallberries.

Q. And, also, some of this area is sort of marshy and swamp like, isn't it?

A. Yes, there's ponds.

Q. And these ponds were there in 1963 in April, weren't they?

A. Yes.

Q. If one ran up through the woods about five and a half miles it would be likely that his clothes would be torn and muddy, wouldn't it?

The Solicitor General: Now, your Honor, that would be a conclusion. He wouldn't know whether his clothes would be torn and muddy or not. It's immaterial and just delaying the case—just taking up unnecessary time. It has nothing to do with the case.

The Defendant's Attorney: Your Honor, I think it's very material and the jury should hear it—they should know the character of the land out there and know the probability of whether or not a man could travel through the woods.

The Court: Well, ask him the condition of the woods.

The Defendant's Attorney: I think he's answered that, your Honor, but I'm trying to show something else.

Q. Mr. Stokes, Isaac Sims didn't work for you, did he?

A. No.

Q. And he didn't live in the quarters, did he?

A. No.

Q. And that's why you took him and put him in the car?

A. No, that's not why.

Q. You say that when you arrived there in the quarters [fol. 214] the defendant Sims was sitting on the porch with his feet on the ground? Is that correct?

A. Yes.

Q. And there were some other colored people around—about twelve or fourteen?

A. Yes.

Q. Is that right?

A. Yes.

Q. And those people worked for you?

A. Well, most of them was children. Some grown people. Yes, they all worked for us.

The Defendant's Attorney: Thank you.

(Witness excused).

T. W. Walker was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Your name is T. W. Walker?

A. Yes, sir.

Q. T. W., where do you live?

A. Toledo.

Q. Is that in Charlton County?

A. Yes, sir.

Q. T. W., how old are you?

A. Thirty-one.

Q. You're thirty-one?

A. Yes, sir.

Q. Do you know the defendant here, Isaac Sims, Jr.?

A. Yes, sir.

Q. The defendant sitting over there—you know him?

A. Yes, sir.

[fol. 215] Q. About how long have you known him, T. W.?

A. Oh, about ten years.

Q. Did you know Miss Nola Jean Roberts at that time?

A. Yes, sir.

Q. And do you remember the occasion back on the 13th day of April, 1963, when she was attacked?

A. Yes, sir.

Q. Do you know Mr. Noah Stokes?

A. Yes, sir.

Q. Do you work for him, or what's your connection with him?

A. He was my boss man.

Q. He was your boss man?

A. Yes, sir.

Q. Now, on the day that Nola Jean Roberts was attacked did you see Mr. Stokes on that day?

A. Yes, sir.

Q. About what time of day did you see him?

A. See Mr. Stokes?

Q. Yes.

A. About 2 o'clock.

Q. Was that in the day time?

A. Yes, sir.

Q. Now, after you saw him did he say anything to you?

A. No, sir——

Q. Did you hear Mr. Stokes say anything about this attack?

A. He sent word to me.

Q. He sent word to you?

A. Yes, sir.

Q. After you got the word then what did you do, if anything?

A. I just stayed to the house around there and kept a watch out.

[fol. 216] Q. You stated that you stayed at the house and kept a watch out?

A. Yes, sir.

Q. What were you watching for, T. W.?

A. He told us there was a stray man and to notify him if he come around there.

Q. And while you were watching out did you see anybody that afternoon that you thought was unusual in any respect?

A. Yes, sir.

Q. I'll ask you if you saw the defendant, Isaac Sims, that evening?

A. Yes, sir.

Q. About what time of the evening did you see him?

A. About 2:30.

Q. And where was he when you first saw him?

A. He was at another boy's house—Boy Roberson's house.

Q. And what happened then when the defendant, Isaac Sims, Jr., came there? Tell me what happened then.

A. He just come there and stand up on my front porch, and stand up there was all.

Q. That was Isaac Sims, Jr.?

A. Yes, sir.

Q. Did you look at him at that time?

A. Yes, sir.

Q. Tell the jury what you saw about his condition, if anything, at that time.

A. I looked at him and his clothes was muddy a little bit.

Q. You say his clothes were muddy?

A. Yes, sir.

Q. What part of his clothes was muddy?

A. His knees.

Q. Do you know Arthur?

A. Yes, sir.

[fol. 217] Q. Now, what relation is Arthur Walker to you, if any?

A. He's my brother.

Q. Do you know where he is now?

A. Yes, sir.

Q. Where is he?

A. In the court house.

Q. Was Arthur with you on that occasion?

A. No, sir. He come down there.

Q. All right, Arthur came down where?

A. Down to my house.

Q. Was Arthur there while the defendant was there, Isaac Sims?

A. Yes, sir.

Q. And what did you do or what did Arthur do after Isaac Sims came there and you saw he had mud on his breeches, and so forth? What did you do then?

A. I didn't do nothing but told him to go on and give himself up.

Q. You told who that?

A. Isaac Sims.

Q. Well, when you told him he ought to give himself up what did he say?

A. He didn't open his mouth.

Q. What?

A. He didn't open his mouth.

Q. And then what happened?

A. I left him there and I went and got in my car and went and got Mr. Stokes.

Q. You left him with whom?

A. With my brother, Arthur Lee.

Q. With your brother Arthur?

A. Yes, sir.

Q. And you went and got Mr. Stokes?

[fol. 218] A. Yes, sir.

Q. That was Mr. Noah Stokes?

A. Yes, sir.

Q. And then did Mr. Stokes come there after then?

A. Yes, sir.

Q. And what happened when Mr. Stokes came there?

A. He didn't nothing but just got up off the porch and got in the truck with him.

Q. And when Mr. Stokes came there were there several other people around there?

A. No, sir; no more than the children around there.

Q. Well, were there colored people or white people there with the defendant at that time?

A. Nothing but colored.

Q. Nothing but colored?

A. No, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney): Your name is T. W. Walker? Is that right?

A. That's right.

Q. And when Mr. Stokes came over there you were afraid, weren't you?

A. Yes, sir.

Q. As a matter of fact, you were very scared, weren't you?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. You'd been knowing Miss Roberts (Mrs. Crawford now) a long time, hadn't you?

[fol. 219] A. Yes, sir.

Q. As a matter of fact, you knew her very well, didn't you?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Now, have you ever had occasion to walk over to her house from where you live?

A. No, sir.

Q. Have you ever gone to her house?

A. Yes, sir.

Q. Do you know where she lives?

A. Yes, sir.

Q. When is the last time you went over to her house before this incident happened?

A. I couldn't tell you the last time I've been over there.

Q. But you do remember that you've been over there?

A. Yes, sir.

Q. You know exactly where she lives, don't you?

A. Yes, sir.

Q. As a matter of fact, you are very familiar with those woods over there between Highway 23 and Toledo and where Miss Roberts lives?

A. Yes, sir.

Q. You've been out in those woods a lot of times, haven't you?

A. Yes, sir.

Q. You could find your way through those woods at night, couldn't you?

A. Do how?

Q. You wouldn't have any trouble at all, would you?

(No response)

[fol. 220] Q. Now, you said that the first time that you saw Mr. Stokes was about 2 o'clock in the afternoon? Is that right?

A. That's right.

Q. And that was the first time that Mr. Stokes had seen you. Is that right?

A. Yes, sir.

Q. And you knew that something was wrong, didn't you?

A. After he sent the word I knowed something was wrong.

Q. Where had you been all day long?
A. Down here to Folkston.
Q. You'd been down to Folkston?
A. That's right.
Q. When did you come home from Folkston?
A. I got home about one o'clock.
Q. Did anybody see you in Folkston?
A. I imagine just about everybody around here seen me in Folkston.
Q. I asked you, Mr. Walker, did anybody in Folkston see you?
A. Well, somebody down here seen me.
Q. Do you know that person's name?
A. I don't know that I could call all of them's names around here that know me.
Q. But you say you were down here in Folkston? Is that right?
A. Down here in Folkston.
Q. You were driving?
A. That's right.
Q. What were you driving?
A. A 1954 Chrysler.
Q. You were driving a 1954 car? Is that right?
A. That's right.
Q. Was it your car or somebody else's?
[fol. 221] A. It was mine.
Q. Do you still have it?
A. No, I've got a Pontiac now.
Q. And you say that you saw the defendant over there in Toledo and you saw some mud on his knees, didn't you?
A. That's right.
Q. Didn't he tell you he had been shooting dice?
A. That's what he said.
Q. You didn't see any other mud on him any place else except on his knees? Is that right?
A. That's right.
Q. Now, you've been knowing Isaac for sometime, haven't you?
A. That's right.
Q. How long did you say you've been knowing Isaac?
A. About ten years.
Q. And you know Isaac is kind of dumb, don't you?
A. I didn't know that.

Q. You know he can't read or write, don't you?
A. I didn't know that.
Q. You can read and write, can't you?
A. No, sir.
Q. You can't read and write?
A. No, sir.
Q. Now, you can't name anybody who saw you in Folkston on April 13, 1963, can you?
A. No, sir.

The Defendant's Attorney: Thank you.

(Witness excused.)

Arthur Lee Walker was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

[fol. 222] Direct examination.

Q. (By the Solicitor General) Your name is Arthur Lee Walker?
A. Yes, sir.
Q. Arthur Lee, you live where?
A. Toledo, Georgia.
Q. In Toledo?
A. Yes, sir.
Q. Do you know Mr. Noah Stokes?
A. Yes, sir.
Q. Do you know T. W. Walker, who was just in here?
A. Yes, sir.
Q. What relation is he to you, if any?
A. My brother.
Q. Now, Arthur, do you know the defendant, Isaac Sims?
A. Yes, sir.
Q. The defendant here, Isaac Sims—do you know him?
A. Yes, sir.
Q. How long have you been knowing Isaac Sims, Arthur?
A. Well, about ten years.
Q. Do you know Miss Nola Jean Roberts, who was Miss Nola Jean Roberts at the time?
A. Yes, sir.
Q. About how long had you been knowing her?

A. About twelve years.

Q. Do you remember the occasion when Nola Jean was attacked?

A. Yes, sir.

Q. On April 13th, 1963?

A. Yes, sir.

Q. Where were you living at that time? Were you living at Toledo?

A. Yes, sir.

[fol. 223] Q. Did you see Mr. Noah Stokes any time that day?

A. Yes, sir.

Q. Did he talk to you or send you any word?

A. Yes, sir.

Q. About what time of day did he talk to you or send you some word?

A. About one.

Q. About what time?

A. Just about one or one-thirty.

Q. In the day time?

A. That's right.

Q. And after you received the word or talked to him what did you do, Arthur, if anything?

A. Well, I just "sot" around there to my mother's.

Q. Were you looking for anybody or anything?

A. Yes, sir; after he told me.

Q. And did you see the defendant, Isaac Sims, Jr., on that day?

A. I first seen him at Mr. Boy Roberson's house.

Q. Now, where was that in relation to where you lived?

A. It was about as far as from here to up town, or a little further.

Q. About two blocks?

A. I imagine it was about further than that around there to my mama's house.

Q. Now, when you first say him about what time of the day was that?

A. Oh, it was getting on around about 2 or 2:30 or somewhere in there.

Q. Then what happened, if anything?

A. Well, I went there to Boy Roberson's house, and he come—when I went up there I asked him where he come from, and at that time he told me he was coming from St.

George shooting dice. I asked him who he went to St. [fol. 224] George with. He said he went up there with Jake Stewart. I told him no, he ain't went to St. George with Jake Stewart, for Jake Stewart don't have a car; and at that time I asked him what the law was doing looking for him. He asked me what law. I says, "You know what law." And at that time he broke to go in Boy Roberson's house and Boy shoved him out, and at that time he went around the house that way and I went around that way (indicating), and he got around there and I asked him did he really attack that white woman.

Q. You asked him what?

A. Did he attack that white woman.

Q. And what did he say?

A. He said he did.

The Defendant's Attorney: I object to it, your Honor. He has not shown that this was a voluntary statement at all, and your Honor, it would be self-serving.

The Solicitor General: How could it be self-serving? This is a witness who has no interest in the case. I will ask him the preliminary questions, though. I will be glad to do that.

Q. When you asked him the questions at that time had you threatened him at that time or done anything to him?

A. No, sir.

Q. Had anybody promised him anything to make a statement?

A. No, sir.

Q. Was there any fear of you or anybody else there at that time to cause him to make a statement?

A. No, sir; not as I know.

Q. Was anybody doing anything to him at the time?

A. No, sir.

Q. Did anybody tell him he had to make a statement?

A. No, sir.

Q. And you asked him what, now?

[fol. 225] A. I asked him did he attack that white woman, and he said, "Yes." And at that time he took off and took a little trot towards the swamp down there, and I backed up to the window and asked Boy Roberson for his gun, and I called him, and he turned around and come back to me, and he got just about to me and I throwed the gun on him

and told him to go and sit on T. W.'s porch, and at that time I told T. W. to go tell Mr. Stokes to come pick him up—that we got his man around here, and he set on the porch there and he said no more to me and I said no more to him.

Q. How did he leave from where you were?

A. All right.

Q. Who did he leave with?

A. Mr. Stokes.

Q. And did you see the condition of his clothes at that time?

A. No, only his knees was muddy.

Q. And he said he was the person who attacked that girl? Is that right?

A. That's right.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) You are Arthur Walker? Is that right?

A. Yes, sir.

Q. And you are the brother of T. W. Walker?

A. That's right.

Q. Now, how old are you?

A. Twenty-six.

Q. Now, you live over there in Toledo, you and your brother? Is that right?

A. Yes, sir.

[fol 226] Q. Now, what did you do on the morning of April 13th?

A. What was I doing?

Q. Yes.

A. I was down in Folkston.

Q. What were you doing down in Folkston?

A. Just riding around waiting for my mother to get through from work.

Q. You were just riding around?

A. Yes, sir.

Q. Do you know anybody who saw you riding around?

A. Well, I had some more of my brothers with me.

Q. How many brothers do you have?

A. Nine.

Q. Did you have T. W. with you?
A. No, sir.
Q. You don't know where T. W. was, do you?
A. No, sir.
Q. Now, when you claim that you asked the defendant, "Did you attack that white woman?" And you say he said, "Yes", nobody heard that but you? Is that right?
A. No, sir; there was some more heard it, but they ain't here.
Q. Who are they?
A. There was a lot of them heard it.
Q. Now, this is the first time you ever told that anybody else heard that? Is that right?
A. Sir?
Q. I say this is the first time you ever told anybody else that somebody else heard it? Is that right?
A. That's right.
Q. You are pretty familiar with that area over there [fol. 227] between Toledo and the Lonnie Roberts road and the highway, aren't you?
A. That's right.
Q. Because you live in the area? Is that right?
A. That's right.
Q. And you could find your way through that area at night, couldn't you?
A. In the dark?
Q. As a matter of fact, you know all the short cuts and roadways and paths, that lead through there, don't you?
A. So far I do, yes, sir.
Q. Have you ever been hunting out there?
A. Not there.
Q. But you have been out there, haven't you?
A. That's right.
Q. Your brother, T. W., has been out there, too, hasn't he?
A. That's right.
Q. Now, you don't know where T. W. was on that morning, do you?
A. No, sir.
Q. T. W. doesn't know where you were?
A. No, sir.
Q. But you do know that T. W. wasn't in Folkston with you? Is that right?

A. That's right.

Q. And you'd been knowing Miss Nola Jean Roberts a long time, hadn't you?

A. That's right.

Q. As a matter of fact, you had been over to her house, hadn't you?

A. I've been by there?

Q. You've been by there?

A. That's right.

Q. Can you read and write?

A. No, sir.

Q. Now, when Mr. Stokes came over in the quarters there [fol. 228] he didn't ask you where you'd been, did he?

A. No, sir.

Q. You didn't tell him where you'd been, did you?

A. No, sir.

Q. As a matter of fact, you didn't tell him where T. W. was, did you?

A. No, sir.

Q. So, Mr. Stokes didn't know how long you'd been at home, did he?

A. No, sir.

Q. The only mud you say you saw on the defendant's clothes was on his knees? Is that right?

A. That's right.

Q. And he told you he'd been shooting dice?

A. That's right.

The Defendant's Attorney: The witness is with you.

Redirect examination.

Q. (By the Solicitor General) He also told you he attacked that girl, didn't he?

A. Yes, sir.

The Solicitor General: You can come down.

The Defendant's Attorney: Just one more question.

Recross examination.

Q. (By the Defendant's Attorney) You say you don't know where your brother T. W. was, do you?

A. No, sir.

(Witness excused.)

C. V. Gowen was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

[fol. 229] Q. (By the Solicitor General) Would you state you name for the record?

A. C. V. Gowen, Trooper, Georgia State Patrol.

Q. Did you hold that position during all the year 1963?

A. Yes, sir.

Q. And especially on the 13th day of April, 1963?

A. Yes, sir.

Q. Do you remember the occasion when Nola Jean Roberts was raped back on April 13th, 1963?

A. Yes.

Q. Where were you stationed at that time?

A. Waycross, Georgia.

Q. And where was your territory?

A. Well, it included Charlton County.

Q. About what time of the day did you learn about this—that you got the report that Nola Jean Roberts had been raped?

A. It was in the morning time. I'd say from 10 to 11 o'clock.

Q. And did you go to the scene where she was raped?

A. Yes, sir.

Q. Where was that in relation to her house, if you know?

A. Well, I believe her house is at the end of the lane at the end of a dirt road, and it would be east of her residence.

Q. About a half a mile away from the scene?

A. Yes, sir.

Q. And how did you go to the scene? How were you traveling?

A. In a patrol car.

Q. And what did you bring with you to the scene of where Nola Jean Roberts had been raped, if anything?

A. We didn't bring anything ourselves, but just another trooper and myself. Another car brought the dogs—two bloodhounds.

Q. Who had the bloodhounds?

[fol. 230] A. Corporal Griffin.

Q. And what did you do then with the bloodhounds, if anything?

A. Corporal Griffin brought the two bloodhounds and two dog boys, and the two dog boys and myself——

Q. (Interposing) Now, let me ask you who the dog boys were. Is that prisoners?

A. Yes, sir; prisoners that run with the dogs. They're all trained for tracking human beings.

Q. And did he bring those bloodhounds to the scene?

A. Yes, sir.

Q. And did you receive any information at the scene?

A. Well, we found out what was supposed to have happened and where it happened.

Q. What did you do with the dogs?

A. We found tracks.

Q. In relation to the road which way were the tracks running?

A. Well, there were tracks all over the place.

Q. Let me ask you something——

The Defendant's Attorney: (Interposing) Just a minute. Could he complete his answer?

The Solicitor General: Yes.

The Witness: My answer was complete.

Q. (By the Solicitor General) I beg pardon?

A. My answer is complete.

The Defendant's Attorney: I'd like to have his answer completed, your Honor. Did you say there were tracks all over the place?

A. Yes.

Q. (By the Solicitor General) Now, were there any—do you know where Toledo is?

A. Yes, sir.

Q. Did you see any human tracks leading in that direc-
[fol. 231] tion from the scene?

A. Yes, sir.

Q. Now, in relation to the road, would that be towards the road or away from the road, across the woods?

A. Well, are you referring to the county road—the graded road?

Q. I'm referring to the county road—the dirt road.

A. The track lead north. When they left the scene they went in a northerly direction.

Q. Now, what did you do with the dogs, if anything, in relation to those tracks at the scene leading north?

A. We put the dogs on the track, and they took the trail —a hot trail, and they immediately struck out, and traveled for some distance in a northerly direction, and then veered to the east across Georgia 23, and then parallel with Georgia 23 for a while on the east side, and we trailed the track that far.

Q. And how did those tracks go in relation to Toledo?

A. They were going toward Toledo.

Q. Did you track all the way to Toledo?

A. Not quite all the way.

Q. About how close to Toledo did you track?

A. About a half a mile.

Q. About how many miles did you follow the tracks, if you know?

A. Well, there was a lot of wandering. It could have been ten or twelve miles.

Q. The track was winding around?

A. Yes, winding around. No fixed position. When they left the dirt road they went parallel and ran north, and then headed east, and then headed back north again.

Q. Now, you stated that you went to about a half a mile of Toledo—what caused you to stop?

A. Well, at that time we were contacted by Corporal Griffin, who advised us that the subject had been picked up, [fol. 232] and we stopped the chase.

Q. You were the man with the dog boys doing the tracking?

A. Well, I was with the dog boys, yes.

Q. With the dogs?

A. Yes, sir.

Q. And you say you stopped about a half a mile before you got to Toledo because you were advised that the subject had been picked up?

A. Right.

Q. Did you see the defendant here, Isaac Sims, Jr., at that time or shortly thereafter?

A. Yes.

The Solicitor General: He's with you.

The Defendant's Attorney: I move to strike the witness' testimony, your Honor, on the ground that it is totally irrelevant and it's not connected up.

The Solicitor General: He testified that the dogs got on the trail at the scene, and his testimony was that he followed them within about a half a mile of Toledo, and there's testimony already in that this defendant was picked up at Toledo, and it's a circumstance leading to his arrest.

The Defendant's Attorney: Your Honor, I don't see how a track that led a half a mile from Toledo led to his arrest, when the witness has testified himself that the subject was taken in custody. He didn't even know who the subject was at that time.

The Court: Well, I'm going to let it in.

The Defendant's Attorney: Note my Exception.

The Court: All right.

Cross examination.

Q. (By the Defendant's Attorney) Officer Gowen, you don't know whose tracks these were, do you?

[fol. 233] A. No.

Q. As a matter of fact, you don't even now know whose tracks these were, do you?

A. No.

Q. All you know is that the dogs ran tracks and you followed some tracks?

A. We ran human tracks.

Q. Did you make any other investigation to find out who committed the offense?

A. No.

Q. Did you ever take the dogs up to Toledo and take them to T. W. Walker's house?

A. No.

Q. What about Arthur's house?

A. No. We didn't take the dogs to Toledo at all.

Q. So you just don't know whose tracks these were?

A. No, I don't know whose they were.

Q. They could have been T. W. Walker's tracks or could have been Arthur Walker's tracks, or they could have been anybody's tracks? Is that right?

A. I don't know whose they were.

Q. Is that right? They could have been anybody's tracks?

A. I don't know whose they were.

(Witness excused.)

George Sims was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Would you state your name for the record?

A. George Sims.

Q. What is your position, Mr. Sims?

[fol. 234] A. I'm Sergeant of the State Patrol at Waycross.

Q. Is Charlton County in your district?

A. Yes, sir.

Q. Sergeant, do you remember the occasion back on the 13th day of April, 1963, when Nola Jean Roberts was raped?

A. Yes, sir.

Q. Do you know the defendant, Isaac Sims, sitting over here, Sergeant?

A. Yes, sir.

Q. Did you see him on that date?

A. Yes, sir; I did.

Q. Where did you first see him?

A. South on Georgia 23 towards St. George.

Q. And where was he or who was he with at that time?

A. He was in the car with Mr. Stokes.

Q. Is that Noah Stokes?

A. Yes, sir.

Q. What happened when you saw him?

A. Trooper Peacock and I took him into our custody.

Q. When you say Trooper Peacock and yourself—what rank is Trooper Peacock?

A. Trooper.

Q. Were you the officer in charge at that time?

A. Yes, sir.

Q. And he was turned over to you then?

A. Yes, sir.

Q. Now, when Isaac Sims was turned over to you where was that where he was turned over to you?

A. South of Folkston near Toledo.

Q. And about what time of day was that, Mr. Sims?

[fol. 235] A. Around 3 o'clock.

Q. And when Isaac Sims, Jr., was turned over to you what did you do with him, if anything?

A. We brought him to Dr. Jackson's office.

Q. And then where did you take him, if anywhere?

A. Then we took him to Waycross.

Q. What did you do with him in Waycross?

A. We took him to the Ware County jail.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Why did you take him to Dr. Jackson's office?

A. That was the orders—Instructions from Sheriff Sikes.

Q. To take him to Dr. Jackson's office?

A. Yes.

Q. It doesn't matter who is delivered to you, do you take that person to Dr. Jackson's office? Is that right?

A. I took that boy to Dr. Jackson's office.

Q. My question is that any subject delivered to you on this day you would take them to Dr. Jackson's office?

A. Anybody that the sheriff instructed me to take I would take.

Q. If someone else had been arrested they would have been taken to Dr. Jackson's office?

A. No, I didn't say that.

Q. You didn't make any other investigation, did you?

A. No.

Q. So, you don't know whether or not someone else did commit this offense or not, do you?

A. I don't know.

Q. You made no other investigation, did you?

[fol. 236] A. No.

Q. Did you take any foot prints at the scene?

A. No.

Q. Did you take any finger prints on a car at this scene?

A. I didn't.

Q. By the way, do you know what happened to that car that the negro man was supposed to have been driving?

A. I do not. I never saw the car.

Q. But you made no investigation to ascertain finger prints or foot prints, did you?

A. No.

The Defendant's Attorney: That is all.

Redirect examination.

Q. (By the Solicitor General) As a matter of fact, you don't take any finger prints in your position in any case, do you?

A. I wasn't the investigating officer.

Q. You didn't make any type of investigation of that case?

A. It wasn't my job to make an investigation.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Excuse me, Sergeant Sims. Who was the officer stationed at the State Patrol who was in charge of making investigations?

A. Investigator Cornelius and Investigator Dixon. They are the investigating officers.

Q. Now, do you know of your own personal knowledge, Sergeant Sims, whether or not they made any such investigation?

A. Not from personal knowledge.

(Witness excused.)

Robert C. Adkins was thereupon called as a witness in [fol. 237] behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Will you state your name for the record?

A. Robert C. Adkins.

Q. What business are you in or what position do you hold, Mr. Adkins?

A. I operate the funeral home and ambulance service here.

Q. Is that here in Folkston, Georgia?

A. That's right.

Q. Do you know Nola Jean Roberts?

A. I do.

Q. Do you remember the occasion back on the 13th day of April, 1963, when she was molested?

A. I do.

Q. Did you receive a call on that date? Don't tell what was said, but did you receive a call?

A. I did.

Q. About what time of day did you receive that call?

A. A little before noon time, as I recall.

Q. In response to that call what did you do, if anything?

A. I took the ambulance to Nola Jean Roberts' home.

Q. Now, where is that home? Is that near St. George?

A. Yes, that's correct.

Q. And when you got to her home where she lived what did you do at that time? Did you see Nola Jean?

A. I did.

Q. Where was she?

A. Laying on the couch in her living room.

Q. And did you observe her at that time?

[fol. 238] A. I did.

Q. State to the jury what you saw when you observed her?

A. She was dirty, covered with sand; she was bloody on her face, and apparently swollen around the eyes, and her face—the sand on her face was tear streaked.

Q. And what did you do, if anything, after you went there and observed her lying there in that condition?

A. Put her on the stretcher and into the ambulance.

Q. Then what did you do with her?

A. Brought her into the McCoy-Jackson Hospital here in Folkston.

Q. Did you have a chance to observe Nola Jean on her trip to the hospital?

A. Yes, I did. I watched her frequently.

Q. Would you tell the jury what you observed on this trip to the hospital?

A. Nola Jean, of course, was crying, and her mother was riding in the back of the ambulance with her, and her mother was quite distressed, and she was crying, and her mother spent most of the trip into the hospital with her arms folded over Nola Jean and her head laying over the stretcher, leaning over Nola Jean, and they were both crying terribly.

Q. And where did you carry them?

A. To the McCoy-Jackson Hospital.

Q. About what time of the day did you get them there? Approximately what time was it?

A. 12:15 or 12:30. Somewhere along there, I think.

Q. What portion of the hospital did you take her in?

A. To the emergency room.

Q. Did she see a doctor at that time?

A. Yes. Dr. Jackson was there.

[fol. 239] The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) You don't know what happened out there on the road at all, do you?

A. Not of my own knowledge. Only what I was told.

Q. And your testimony is that you transported Mrs. Crawford, now, you know Miss Roberts is married?

A. Yes.

Q. And you transported Mrs. Crawford to Dr. Jackson's office—to his hospital? Is that right?

A. That's correct.

The Defendant's Attorney: That's all.

(Witness excused.)

DR. JOSEPH M. JACKSON was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Would you state your name for the record?
A. Joseph M. Jackson.
Q. What's your profession?
A. Medical doctor.
Q. Where did you go to school, Doctor?
A. Medical College of Georgia in Augusta.
Q. Did you graduate, Doctor?
A. Yes.
Q. When did you graduate?
A. 1943.
Q. And what have you been doing since that time?
A. Well, interned for a year at the University Hospital in Augusta, and served thirty months active duty in the U. S. Navy.
Q. Now, what did you do when you served on active duty in the Navy, Doctor?
[fol. 240] A. I was ship's doctor aboard a ship at sea.
Q. Is that a medical doctor?
A. Yes.
Q. And since that time what have you been doing?
A. I worked a year at the Atlantic Coast Line Hospital in Waycross, Georgia.
Q. As a doctor?
A. As a doctor. And I've been practicing in Folkston since 1947.
Q. Is that in the general practice of medicine, Doctor?
A. Yes.
Q. Now, Doctor, do you know Nola Jean Roberts?
A. Yes.
Q. Who is now Nola Jean Roberts Crawford?
A. Yes.
Q. Doctor, do you remember the occasion when she was attacked on the 13th day of April, '63?
A. Yes, I do.
Q. Doctor, did you see her on that occasion?
A. Yes, I did.

Q. About what time of day or night did you see her, Doctor?

A. It was shortly after noon, April the 13th.

Q. Shortly after noon—you mean after dinner—shortly after 12 o'clock?

A. It was around 12:15 or 20.

Q. Where did you see her on that occasion, Doctor?

A. At the emergency room of the hospital—McCoy-Jackson Hospital here in Folkston.

Q. Now, Doctor, had you had an occasion to examine Nola Jean Roberts just prior to the 13th day of April, '63?

A. Yes, I had seen her on two or three occasions in two or three weeks prior to this occasion.

[fol. 241] Q. Doctor, had you had occasion to, just prior to this date, the 13th day of April, 1963, to examine her private parts?

The Defendant's Attorney: I object to that, your Honor. It's highly irrelevant and immaterial as to what her condition was prior to April 13th, 1963.

The Solicitor General: We want to show what her condition was before and after.

Q. I will rephrase it and ask you what her condition was just prior to this date, the 13th?

The Defendant's Attorney: I object to that, too, your Honor. It is a leading question, first of all, and I object to the form of the question as being irrelevant and immaterial.

The Solicitor General: Certainly, to ask what a person's condition is is not a leading question, because it doesn't suggest any answer. I ask him if he knew her condition from having examined her.

The Court: That wouldn't be a leading question.

Q. (By the Solicitor General) Did you examine her, Doctor, just prior to April 13, '63?

A. Yes.

Q. What was her physical condition at that time?

A. Well, it was a normal condition that you would normally find in a virgin female.

Q. And, Doctor, you say that she was a virgin at that time?

A. Yes, when I examined her.

Q. Now, Doctor, when you saw her on the 13th day of April at the hospital in the emergency room shortly after 12 o'clock did you examine her at that time?

A. I did.

Q. Would you tell this jury what her condition was at that time, Doctor? Did you examine her face?

[fol. 242] A. When I saw her she was lying on the emergency room table, very emotionally upset and almost in a state of shock from the experience that she said she had just gone through. Her clothes were dirty that she had on; her face was dirty; there was mud about her legs; and her face had blood stains, had bruise marks, and there was clotted blood about, particularly, her nose, and the eyes were bloodshot. There were marks on her neck, chest, and breast, and there were marks on her lower abdomen, and her female parts showed evidence of fresh trauma. There was a bleeding area and a small torn area in the lower part.

Q. Now, Doctor, I believe you did examine her private parts at that time? Is that right?

A. Yes, I just made a statement as to that.

Q. And in laymen's language did you find there had been any penetration of that part?

A. There was a penetration.

Q. And inside the vagina what did you find—inside the private parts?

A. It was just bruised and was beginning to show some swelling and trauma.

Q. Doctor, did you make any pictures of Nola Jean at that time—about that time?

A. The following morning I made pictures of her eyes and face, neck and chest.

Q. Doctor, how long did she stay in the hospital as a result of this attack on her—being raped?

The Defendant's Attorney: I object to that, your Honor.

The Court: All right, on what ground?

The Defendant's Attorney: I object to the form of the question. It's leading. And I object, secondly, that there [fol. 243] is no foundation for her staying in the hospital because she had been raped.

The Solicitor General: All right, I'll withdraw the question an rephrase it.

Q. Doctor, you examined her and you just explained this condition to the jury? Is that correct?

A. Yes.

Q. How long did she stay in the hospital as a result of these injuries that you just referred to—the injuries to her face and neck and to her body?

A. She stayed in the hospital approximately six days, and the following day—there was increasing severity for the next three or four days. She complained of severe pain in her left chest, which was a direct result of trauma sustained April 13th.

Q. And what about her neck, Doctor? Did you examine her neck?

A. There were bloodshot areas, would be a simpler term for that, on her neck.

Q. Would you point on your neck the blood shot areas on her neck, Doctor?

A. Well, I had occasion to make some pictures of that area, and I have those slides, which would show that.

Q. Doctor, did you make the pictures yourself?

A. I made them myself.

Q. Doctor, did you make a picture of her face?

A. I did.

Q. And her neck?

A. I did.

Q. And other portions of her body?

A. I have pictures of her face and neck and upper chest area.

Q. Now, Doctor, those pictures you have, are they true [fol. 244] and correct representations of her condition at that time?

A. Of the trauma to this area it is.

Q. Do you have those pictures available?

A. I do.

Q. Would you let me see them, Doctor?

A. They are slides (producing slides).

The Solicitor General: I would ask the Court Reporter if he would mark these as Exhibit 1 for the State of Georgia for the purpose of identification.

(The container holding the slides referred to was thereupon marked for identification "State's Exhibit 1").

Q. Now, Doctor, I believe you've already testified that those slides present a true and correct representation of her at that time?

A. Yes.

Q. When did you say they were taken, Doctor?

A. April 14th—the morning of April 14th.

Q. Of what year?

A. 1963.

Q. And, Doctor, do you have any means that you can show these pictures to the jury?

A. I have a projector and a screen which can be set up.

Q. Can you do it at this time, Doctor?

A. Yes.

The Defendant's Attorney: Of course, your Honor, we're going to object to showing the slides, and I'd like to approach the bench.

(A conference was thereupon held off the record.)

The Court: Let the jury go to the jury room.

(The jury thereupon retired from the court room.)

The Defendant's Attorney: Your Honor, we would like [fol. 245] to look at them before they are shown to the jury. There may be some objections.

(The witness thereupon projected the slides on a screen set up in the court room.)

The Court: We are going to have to have some order to them.

The Solicitor General: What about letting the Court Reporter mark them.

The Court: Let him mark them.

The Solicitor General: And then you can give the numbers.

(The slides in question were thereupon marked for identification, "1-A, 1-B, 1-C, 1-D," and "1-E.")

The Court: Now, do you object?

The Defendant's Attorney: Yes, sir; I object to these photographs. First of all, the photographs themselves do not accurately identify the person whom they purport to be. The only way that the identify of the person whose

photographs they purport to be can be established is by a witness who has a proprietary interest in the case, since he is the doctor who is employed by the county for medical purposes; and, secondly, that he is the doctor who has been employed professionally by Mrs. Crawford in the case, and we say, your Honor, that the pictures, one, do not adequately establish whom they purport to be; two, that they are offered by a person who has proprietary interest and financial interest in the case; and, thirdly, your Honor, that they are *highway* prejudicial and could do no more than inflame the passions of the jury while being themselves unreliable to show that this is Nola Jean Roberts.

Another observation I'd like to make is that this evidence [fol. 246] could have been produced at the prior trial, and this witness, if his testimony is to be believed, had these pictures, and he didn't produce these pictures, and he has brought them to court here tonight, a year and five months later after the prior conviction. We take the position, your Honor, that the only way justice can be done in this case is for the jury to be prevented from becoming impassioned and inflamed by keeping these pictures out, and I move that the pictures be stricken and not allowed in evidence.

The Solicitor General: Your Honor, in reply to that I'd like to say that these are pictures that the jurors themselves can see for themselves, and they can be the judges of who they are pictures of. Dr. Jackson is not an interested party, and he testified that this is a picture of Nola Jean Roberts, and that he made them and they are true and correct representations; and I might remind counsel that the State decides what evidence to put up or not to put up, and neither Dr. Jackson nor any other witness decides that, and counsel knows that, and he knows it's an improper remark to infer or insinuate that somebody has withheld information, which is not true.

The Defendant's Attorney: I didn't insinuate that anybody had withheld information. I stated what's a matter of fact, your Honor. The witness has just produced these pictures that are in court today.

The Court: I overrule the objections. Bring the jury back.

(The jury thereupon returned to the court room.)

Q. (By the Solicitor General) Dr. Jackson, in reference to Exhibit 1 for the State, which has now been identified as "1-A, 1-B, 1-C, and 1-D), and so forth, I believe you've already testified that you made those pictures yourself and that they are true and correct representations of Nola Jean Roberts at the time that you made them?

[fol. 247] A. Yes.

Q. Now, Doctor, would you show to this jury the pictures that you made? Start with the first exhibit and explain it to the jury. Let me ask you some questions about it. Doctor, I will ask you who is that a picture of?

A. (Exhibiting a picture on the screen) Nola Jean Roberts Crawford.

Q. Now, what exhibit is that?

A. It's Exhibit "1-A."

Q. And is that a true and correct representation of Nola Jean Roberts at the time you took the picture?

A. It is, on April 14th.

Q. Doctor, would you move up to the screen and point out to the jury, and talk loud enough they can hear you?

A. You can see the blood in the eyes, both sides, which is the direct result of trauma, and small bloodshot areas in the skin, and the nose here, and you see there is a small bloodshot area involved in that also.

Q. Now, Doctor, did you make another picture?

A. Yes.

Q. Do you have a picture marked "Exhibit 1-B?"

A. This is Exhibit 1-B.

Q. Doctor, I will ask you who that is a picture of.

A. That's a picture of Nola Jean Roberts Crawfor[illegible]

Q. Did you take that picture yourself?

A. I did.

Q. Are all these true and correct representations of her at the time?

A. They are.

Q. Now, what portion of her body is that a picture of, Doctor?

[fol. 248] A. This is her throat and upper chest area. You can see the bloodshot areas involved in the neck and chest. All over the entire area.

Q. Doctor, did you take another picture of Nola Jean at that time?

A. I did. This is Exhibit 1-C, and that, as you can see, is another view of the neck.

Q. Is that another view of Nola Jean Roberts?

A. Yes. Nola Jean Roberts Crawford.

Q. Would you go and point out on that picture the sign that you have reference to?

A. They are multiple areas—all these little spots (indicating).

Q. Now, for the record, Doctor, what portion of the neck is that?

A. Well, it's the neck right up to the—to just below the area of the chin, where the neck comes onto the chest right here, and the area on the chest is here.

Q. Doctor, did you take another picture of her at that time?

A. I did.

Q. What exhibit number is that?

A. 1-D.

Q. Would you show that to the jury?

A. That is another picture showing the bottom of her nose here, and, of course, the eyes again, and you can see the extent of the hemorrhage into the eye.

Q. For the benefit of getting it in the record, Doctor, what is in the eyes?

A. Well, you have the pupil, the center of the eye, and the cornea, and in this area here normally it's white.

Q. What color is it now?

A. Well, you can see a little white, but mostly red.

Q. Is that what you call bloodshot?

A. That's bloodshot.

[fol. 249] Q. Is that in both eyes?

A. Both eyes.

Q. Doctor, did you take another picture?

A. I did.

Q. Now, what exhibit number is that, Doctor?

A. This is Exhibit 1-E.

Q. Would you show that to the jury?

A. And I think that anybody can see that that is——

The Defendant's Attorney: (Interposing) I object to that, your Honor.

Q. (By the Solicitor General) Doctor, who is that a picture of?

A. Nola Jean Roberts.

The Defendant's Attorney: Your Honor, I object to the witness' characterization that anybody would know who that is. That is not responsive.

The Court: All right, jut ask the Doctor who it is.

The Solicitor General: I've already asked him.

Q. Who is that the picture of?

A. Nola Jean Roberts Crawford.

The Court: All right.

Q. (By the Solicitor General) And that is another picture that I believe you took yourself?

A. I took it on April 14th.

Q. And is that a true and correct representation?

A. A true and correct representation of her on the morning of April 14, 1963.

Q. Did you take any others, Doctor?

A. That's the extent of it.

The Solicitor General: That's all. Thank you, Doctor. He's with you.

Cross examination.

[fol. 250] Q. (By the Defendant's Attorney) Doctor, those pictures you've just shown are slides you took yourself? Is that right?

A. Correct.

Q. I didn't quite hear you.

A. Correct.

Q. And what kind of camera did you use to take those slides?

A. I used a camera that I have at the hospital for making slides—pictures—that we use for making pictures of various types of tissues that we wish to make pictures of.

Q. What type camera is that? What's the make of the camera?

A. I don't know the make of the camera.

Q. Do you use it frequently?

A. Fairly frequently.

Q. How frequently do you use it?

A. When the occasion arises that I want to use it.

Q. How frequently do the occasions arise?

A. There's no frequency. If I have a case I use it. If I don't have a case I have it on hand.

Q. Now, Doctor, how frequently do you have occasion that you want to use the camera?

A. Whenever the occasion arises. It might be one month and it might be four months.

Q. How many times have you used it during the last twelve months, Doctor?

A. I've probably used it six or eight times.

Q. Always at the hospital?

A. Always at the hospital except when I use it at other places.

Q. Does anyone else use the camera?

A. Not to my knowledge.

Q. You don't know who made those cameras?

[fol. 251] A. I don't know the make of it.

Q. Did you buy it yourself?

A. I bought it and paid for it.

Q. Now, who made the slides, Doctor?

A. We sent them to the laboratory.

Q. And where is the laboratory?

A. Waycross.

Q. Do you know the name of the company?

A. I don't know the name of the company.

Q. Is it an American made camera?

A. I presume that it is. I don't know the name of, so how would I know where it was made?

Q. You don't know whether it was a foreign made camera, do you?

A. I've just answered that question.

Q. Answer the question, Doctor.

A. I've answered it.

The Solicitor General: I want to object to that. The witness is entitled to respect. He's asked him a question and he's answered it, and there's no use for him trying to badger the doctor and ask him the same questions over and over. He answered the question and told him he didn't know, and he comes back and asks the same question over and over, and I object to it.

The Defendant's Attorney: Your Honor, I think that's

most unfair of the Solicitor. I'm not badgering any witness. I wouldn't dare badger the witness.

The Solicitor General: No, he's not badgering him. He's just trying to, and I'm objecting to it.

The Court: All right, just ask the witness the questions and proceed with the examination.

Q. (By the Defendant's Attorney) Doctor, is it a foreign made camera?

[fol. 252] The Solicitor General: Your Honor, I want to object to it again. He just told him he didn't know what the name was and didn't know what make it was. He's answered that question over and over.

The Witness: I bought it from a company in New York. I don't know what the name of it is. I do not know where it was made.

The Solicitor General: And the question couldn't possibly be material or have any bearing on the case.

Q. (By the Defendant's Attorney) Doctor, did the camera have various settings and speeds?

A. It is automatic for various speeds. It's designed for this type work.

Q. And when did you first inform the Solicitor that you had these slides?

A. I told him that we had slides back when the case was discussed, back at the time following the incident. I don't remember the date.

Q. And this is the first time you've ever produced those slides? Is that right?

A. The first time he's asked me.

Q. This is the first time that anyone other than you has seen the slides? Is that correct?

A. I guess that—I couldn't make a statement like that. Somebody developed them.

Q. Other than you and the developer no one else has seen those slides so far as you know?

A. Not unless someone at the hospital might have seen them.

Q. Did anyone see you take those pictures?

A. They did.

[fol. 253] Q. Who did?

A. Nola Jean Roberts.

Q. Anyone else?

A. I believe that there was a nurse present at the time. I don't know which nurse it was, but there was a nurse present

Q. But you are not sure of her name? Is that right?

A. I don't remember which nurse it was.

Q. Now, you stated those pictures show some evidence of trauma—this trauma could have resulted from an automobile accident, couldn't it?

A. Any blow could cause it.

Q. By almost any type of injury? Is that right?

A. Not any type. Some types.

Q. Now, you have seen persons who had blood shot eyes because of an accident, haven't you?

A. I have.

Q. As a matter of fact, almost any blow on the nose caused by any collision will cause bloodshot eyes? Is that right?

A. Not necessarily.

Q. But it would, wouldn't it, or could?

A. I wouldn't say that a blow on the nose you'd probably get trauma involving the eyes also.

Q. You usually do, don't you?

A. Usually what?

Q. Usually get some type of trauma involving the eyes when you get a blow on the nose?

A. Unless the eyes themselves. You get trauma involving the eye lids, but, as far as the eyes themselves, a blow on the nose doesn't necessarily mean that you will get trauma in the conjunctiva of the eye. You usually will get some swelling of the lids or some blood in the tissue—the lower eye lid tissues.

[fol. 254] Q. But you may get some redness of the eyes? Is that right?

A. If you get trauma enough involved in that area you might. I don't think you could take the tip of the nose and get a bloodshot eye.

Q. Now, you didn't make any pictures of Mrs. Crawford's private part, did you.

A. No, I made no pictures of that.

Q. As a matter of fact, you made no pictures of her lower extremities at all, did you?

A. I don't have any pictures of her lower extremities.

Q. And I'm asking you, you didn't make any pictures, did you?

A. I don't have any pictures.

The Defendant's Attorney: I don't think the answer is responsive, your Honor. I am asking him did he make any pictures.

The Court: He can answer it.

The Witness: I don't have any picture. I wasn't able to make the type of pictures that I wanted.

Q. (By the Defendant's Attorney) What pictures did you want?

A. I wanted a picture that would show the inner area there, and I wasn't able to put the camera up to get it.

Q. Now, I believe you testified that her lower abdomen had marked trauma—will you indicate where the lower abdomen is?

(The witness indicates.)

Q. Right in here?

A. Right here.

Q. Now, you could take a picture of that area, couldn't you?

A. I could have.

Q. Now, when you were examining Mrs. Crawford you found no sperm, did you?

A. No sperm.

[fol. 255] Q. In fact, you found no evidence of the male climax, did you?

A. I found—If I couldn't find any sperm there wouldn't be any evidence of the climax.

Q. As a matter of fact, all that you found was that the hymen had been torn and there was a bloodshot area of the vagina? Is that right?

A. Well, there was evidence of penetration into the vagina.

Q. Now, you don't know what caused the penetration, do you?

A. I certainly don't.

Q. It could have been caused by any object capable of penetrating?

A. Any object that would have penetrated.

Q. A pencil?

A. No, it wouldn't be a pencil.

Q. A hammer?
A. I don't think it would be a hammer.
Q. Or a tree limb?

(No response.)

Q. I withdraw the question. Now, the defendant was brought to the hospital? Is that correct?
A. He was brought to the office.
Q. Is that a part of the hospital?
A. No, it's not.
Q. Is it adjacent to the hospital?
A. No, it's not.
Q. How close is it to the hospital?
A. Across the street.
Q. Directly opposite the hospital?
A. Almost opposite.
Q. Who was present at the office?
A. I just don't know who was present.
[fol. 256] Q. But you do state that you were there?
A. I was there.
Q. Were the police officers and the troopers there who brought the defendant in?
A. There were some there.
Q. I asked you were the ones who brought the defendant in present?
A. I presume they are the ones that brought him.
Q. Were there any others present?
A. I don't remember seeing any others.
Q. You weren't alone with the defendant, were you?
A. No. I wasn't.
Q. Did you cause his clothes to be removed?
A. No, I didn't cause his clothes to be removed.
Q. Pardon, sir?
A. No, I did not.
Q. Were his clothes removed?
A. They were.
Q. Did you assist in removing them?
A. I think I assisted him slightly.
Q. When you say that you assisted him slightly do you mean that you yanked his clothes off?
A. No, I don't mean that.
Q. Well, precisely what do you mean, sir?
A. I mean what slightly means.

Q. Well, I'm confused.
A. I think you are.
Q. He didn't voluntarily take off his clothes, did he?
A. I'm sure he did. He was taking them off and we just sort of assisted him.
Q. When you say you sort of assisted him you pulled his [fol. 257] clothes off? Is that right?
A. No, we didn't pull his clothes off. Did you ever help anyone take their clothes off?
Q. Well, let me ask you this: When the defendant left your office he wasn't wearing the same pants that he had on when he came in, was he?
A. No.
Q. As a matter of fact, you gave him a pair of white pants, didn't you?
A. I sure did.
Q. Were his other pants torn?
A. I don't know whether they were torn or not.
Q. But you do know that he could not wear the pants that he had on when he left your office, could he?
A. He certainly could.
Q. Well, why did you give him additional pants?
A. Because I didn't want him going out without any.
Q. Couldn't he have worn his own pants?
A. If the officers had wanted him to wear them.
Q. You say if the officers had wanted him to wear the pants?
A. That's right.
Q. What about you?
A. I didn't care what he wore.
Q. Now, while the defendant was in your office he was knocked down, wasn't he?
A. I don't know whether he was knocked down or fell down.
Q. But you do know that the defendant had to be treated by you?
A. He was not treated by me.
Q. You didn't treat him?
[fol. 258] A. I did not.
Q. You deny that you sutured him?
A. I deny that I sutured him.
Q. You deny that he required some treatment?
A. He didn't ask for it.

Q. I'm asking you now.

A. He had a place over his eye that required some treatment.

Q. The State Patrolman didn't put that place over his eye, did he?

A. I don't know who put it there.

Q. He didn't have it over his eye when he came into your office, did he?

A. I didn't see him till after he got in.

Q. And when you first saw him in your office he didn't have it?

A. I couldn't see it. He was sort of slumped over, sort of falling around, like. Most anything could have happened to him.

Q. Well, the officers weren't beating him were they?

A. You'll have to ask the officers.

Q. I'm asking you, Dr. Jackson. I'm asking you whether or not the officers were beating the defendant.

A. I will say that I wasn't there all the time.

Q. I'm asking you about the time you were there.

A. No, he didn't get any beating.

Q. What about when you were there?

A. You just asked that. I told you no. I couldn't tell you when I wasn't there. Now, about that question of me knocking him down—what was I to knock him down with? You didn't think I would hit him with my fist and knock him down, do you?

Q. What did you use?

A. What do you mean what did I use?

Q. To knock him down.

A. I didn't knock him down.

[fol. 259] Q. Did you find him down on the floor?

A. He sort of fell in the floor.

Q. He just sort of fell? Where were you standing at the time he sort of fell?

A. I was standing on my feet.

Q. Were you standing near him?

A. Fairly close.

Q. Were you standing as close as I am to you, or closer?

A. Probably a little closer.

Q. Where you could touch him?

A. I think he could touch me.

Q. And you could touch him? Right?

A. Yes.

Q. And that's when he sort of fell down? Is that right?

A. He was already down. He was not standing up when I entered the office where he was.

Q. Now, when you came in and he was down is that when you kicked him?

A. You better ask him if I kicked him first.

The Solicitor General: Now, your Honor, he's asking an improper question. There's no evidence that he's ever been kicked by anybody, and he's asking a question about was he down when he kicked him. It's an improper question, and I object to it, and counsel knows better than to ask that type question.

The defendant's Attorney: Your Honor, I think the law gives me a right to a thorough and sifting cross examination of this witness. I'm asking the questions for the purpose of finding out whether or not he kicked him. Nobody knows it any better than he does.

[fol. 260] The Witness: You didn't ask me if I kicked him?

The Solicitor: I'd like to object further to his getting up in the doctor's face and raising his voice and asking him questions. I know the doctor is not hard of hearing, and there's no need to get up in his face to ask him questions.

The Witness: And he doesn't need to get close up.

The Court: Just go ahead.

The Defendant's Attorney: I didn't mean to insult the doctor by getting close.

Q. Now, the defendant was kicked? Isn't that right?

A. I don't know that he was.

Q. You deny kicking him?

A. I deny kicking him.

Q. Now, what was the purpose of taking the defendant's pants off?

A. We were checking his pants to see the presence of any menstrual stains that Nola Jean Roberts had, because she was nearing the end of her menstrual period at the time.

Q. She testified she had completed her period.

A. I can't help what she testified. There were blood stains there, and she had had a kotex pad on, and there was blood stain on her.

Q. You don't know what caused that blood stain on her, do you?

A. I know that there was blood and there was blood serum stain like you get from the latter part of the menstrual period.

Q. So your purpose in taking off the defendant's pants was to examine him?

A. I didn't take off his pants, I told you.

Q. Well, somebody took off his pants.

A. Well, that's all right. I was there when his clothes [fol. 261] were being taken off.

Q. Now, who was taking off his clothes?

A. He was taking them off.

Q. And you assisted him as you testified? Is that right?

A. A little help, yes.

Q. What did the little help consist of, Dr. Jackson?

A. Just like if I were to tell you to sit down and pull off your shoe, and take it and pull it off, or pull up your leg and pull your pants off.

Q. You mean you took his pants by force and pulled them off?

A. I didn't say what I did. You said what did I mean by a little help, and I said that would be a little help, and it consisted of something of that nature. Exactly what I did I'm not saying because I'm not positive of the minute details. I can't tell you little simple details.

Q. But is that the way you could have taken his pants off?

A. I could have cut them off, but I didn't

Q. After you took the defendant's pants off what did you do?

A. I didn't take his pants off, so I didn't do anything.

Q. Well, after his pants were taken off what did you do?

A. I checked them.

Q. Checked what, sir?

A. Pants.

Q. Were police officers present?

A. There were some troopers present.

Q. What became of those pants, Dr. Jackson?

A. I don't know.

Q. Did you give them back to the troopers?

A. I just looked at them. I laid them down. I don't know who got them.

[fol. 262] Q. Do you know where they are now?

A. I sure don't

Q. Did you take off his other pants also?
A. Took off his shorts.
Q. That's the same as the underpants? Is that right?
A. Yes.
Q. Do you know what disposition was made of his underpants?
A. No.
Q. How long was the defendant in your office on April 13, 1963?
A. Fifteen or twenty minutes.
Q. Do you know where he was taken after he left your office?
A. He was taken over to the hospital and the place was treated I told you about.
Q. He was taken over to the hospital across from your office? Is that right?
A. Yes.
Q. Is that your hospital?
A. It is.
Q. And he was treated?
A. He was treated at the hospital.
Q. For what was he treated, sir?
A. The place over his eye.
Q. And what treatment did he receive?
A. There was a little small place there and there were, I think, four stitches in it.
Q. You put those stitches in?
A. I did not.
Q. Who did?
A. The doctor who was on duty at the hospital.
Q. Who was that doctor?
[fol. 263] A. Dr. Aztui.
The Defendant's Attorney: Thank you, Doctor.
Redirect examination.
Q. (By the Solicitor General) Doctor, I'll ask you one question: I believe you testified that when you examined her on the 13th day of April, on this occasion that she was at the end of her monthly period?
A. Yes.
Q. And blood came out?
A. Blood stained material.
Q. And if there had been any sperm, the blood would have brought it out, wouldn't it?

A. Well, it's possible. According to how much was there.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Usually, Doctor, this afterflow, which is similar to what a woman experiences after birth, is not extremely heavy at the end of her menstrual period? Is that correct?

A. Not unusually heavy near the end. It's just a small flow, but it's more thin and it flows a lot freer than when there's a lot of blood there.

Q. Doctor, scientifically speaking, the weight of this menstrual flow—the contents—is less than the weight of the male sperm, isn't it?

A. I've never weighed any.

(Witnessed excused.)

Dudley Jones was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

[fol. 264] Q. (By the Solicitor General) State your name for the record.

A. Dudley Jones.

Q. What position do you hold, if any, Mr. Jones?

A. Deputy Sheriff, Ware County.

Q. Mr. Jones, did you hold that position on the 13th day of April, 1963?

A. I did.

Q. Mr. Jones, were you a deputy sheriff prior to serving in Waycross?

A. I was.

Q. What county were you a deputy sheriff in?

A. Charlton County.

Q. Mr. Jones, do you know the defendant, Isaac Sims, Jr.?

A. I do.

Q. Do you see him sitting in the court room?

A. I do.

Q. Will you point at him, please?

(The witness points.)

The Solicitor General: Let the record show that he's pointing at the defendant.

Q. How long have you been knowing Isaac Sims, Jr.?

A. Oh, twelve or thirteen or fourteen years, I guess.

Q. Now, Mr. Jones, did you see Isaac Sims, Jr., on the 13th day of April, 1963?

A. I did.

Q. About what time of the day or night did you see him?

A. Around 6:30 in the afternoon.

Q. Where did you see him?

A. In the Ware County jail in Waycross.

Q. When you saw this defendant, Isaac Sims, Jr., did you say anything to him or did he say anything to you?

A. He spoke to me.

[fol. 265] Q. Where was he at the time?

A. He was in a cell on the third floor of the Ware County jail in Waycross.

Q. What did he say to you, if anything?

A. He said, "Hey, Mr. Dudley. Are you working up here?" I said, "Yes."

Q. Now, where was he at that time?

A. He was in a cell on the third floor of the Ware County jail, Waycross.

Q. And what did he say then, if anything? What did you say to him and what did he say to you?

A. I asked him what he was doing up there, and he proceeded to tell me.

Q. Now, before he proceeded to tell you did you promise him anything to tell you anything?

A. I did not.

Q. Did you threaten him any way?

A. I did not.

Q. Was anybody else present?

A. No one.

Q. Was he offered any hope of reward?

A. He was not.

Q. Was he induced by you in any manner to make a statement?

A. No.

Q. Was he in any fear of injury any way?

A. No.

Q. Was the statement made voluntarily?

A. It was.

Q. What did he tell you then, Mr. Jones?

A. He said he got in trouble with a white woman in Folkston, Georgia.

[fol. 266] Q. Did he tell you who it was?

A. No, he didn't tell me that.

Q. Did he tell you what kind of trouble?

A. Yes.

Q. What did he say?

A. He said he raped a white woman in Folkston.

Q. Now, what happened after then? What did you say to him?

A. I asked him if he wanted to make a statement to that effect, and he said he did.

Q. Now, about what time of the day or night was that?

A. Oh, it was probably 6:30. I was putting some prisoner in the jail at the time.

Q. Did you suggest who to make a further statement to or what?

A. Well, I asked him did he want to make a statement to the sheriff in regard to this, and he said he did.

Q. Did you make arrangements for it at his request?

A. I did.

Q. And who was the sheriff of Ware County at that time?

A. Sheriff Robert E. Lee.

Q. Is he still sheriff now?

A. He is.

Q. And did you make that arrangement for Sims that he had requested?

A. I did.

Q. Did you take him before the sheriff to make that statement?

A. Yes, sir, he was carried before the sheriff.

Q. About what time was he carried before the sheriff to make a statement?

A. 10:30 the same night.

Q. And where was this?

A. It was in the interview room on the first floor in the [fol. 267] Ware County jail.

Q. Is that the place you customarily interview prisoners?

A. Yes, sir.
Q. Now, who was present?
A. Sheriff Robert E. Lee, B. C. Worley, Constable, 1231st District, and Chief Estis Johnson, Ware County police.
Q. Mr. Jones, at that time did he make a statement?
A. He did.
Q. Was it reduced to writing?
A. It was put in writing.
Q. At that time did he make the statement voluntarily?
A. He did.
Q. Did you or anyone else there——

The Defendant's Attorney: (Interposing) I object to that, your Honor. He is leading the witness.
The Court: All right, don't lead the witness.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?
A. No, sir.

The Defendant's Attorney: We move that the answer be stricken. That's leading also.
The Solicitor General: The Code sets out what questions to ask.
The Court: Well, ask him the statutory questions.

Q. (By the Solicitor General) Did anybody offer him anything to make a statement?
A. No.
Q. Was he threatened in any way?
A. No, he was not.
Q. Was he promised any hope of reward?
[fol. 268] A. No.
Q. Or the remotest fear of injury put to him?
A. No, sir.
Q. Mr. Jones, who was the presiding officer there?
A. Sheriff Robert E. Lee.
Q. Who was in charge?
A. Sheriff Robert E. Lee.
Q. And you said this statement was reduced to writing—now, who reduced it to writing?
A. As he dictated it to me I copied it down.
Q. And when you took it down what happened to the statement then? Did he read it or what happened, if anything?

A. He told me he could not read, and I read it to him.

Q. And after you read it to him was the statement signed?

A. It was signed.

Q. And when was it signed?

A. Upon completion of it. It started about 10:30, and it took about thirty minutes, maybe, or thirty-five. Somewhere in that neighborhood.

The Solicitor General: I will ask the Court Reporter if he will mark this "Exhibit No. 2" for the State.

(The document referred to was thereupon marked for identification, "State's Exhibit 2".)

Q. (By the Solicitor General) Mr. Jones, I hand you Exhibit No. 2 for the State. Would you examine State's Exhibit No. 2? What is that?

A. It is the statement that was given to me by Isaac Sims on 4-13-'63 at 10:30 P.M.

Q. Was that statement signed?

A. It is.

[fol. 269] Q. Who signed it?

A. Isaac Sims.

Q. Is this Isaac Sims over here, the defendant, who signed it?

A. It is.

Q. Now, who was present when that was signed?

A. Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of the Ware County Police, and B. C. Worley, Constable of the 1231st District, and myself.

Q. And I believe you said Sheriff Lee was in charge?

A. Yes, he was.

Q. And it was turned over to him?

A. That's right.

The Solicitor General: He's with you.

The Defendant's Attorney: Your Honor, we move to strike the witness' testimony on the ground that the testimony is incompetent, in that it does not support the requirements of the due process of law of the 14th Amendment to the United States Constitution, and of Article 1, Section 3, of the Constitution of the State of Georgia of 1945, in that the Statutes of Georgia—the Code—which

permits a witness to testify as to the four or five leading questions there as to whether or not there was any hope or fear or any reward, or the slightest hope of injury or benefit, and that sort of thing, are inadequate to lay the constitutionally required foundation for the introduction of an extra judicial statement made by a defendant who purportedly made such statement while in the custody of police officers. For that reason I move that the witness' testimony be stricken.

The Court: I will overrule that motion.

The Solicitor General: He's with you.

Cross examination.

[fol. 270] Q. (By the Defendant's Attorney) I believe you testified that you first saw the defendant in the jail about 6:30 in the evening of April 13th, 1963? Is that correct?

A. I did.

Q. And he was on the elevator or in the cell when you first saw him?

A. In the cell.

Q. Was anyone in the cell with him?

A. No.

Q. How large was the cell in which he was contained?

A. About, probably 8 by 8—8 by 10, or something like that.

Q. Could you see him in the cell?

A. It was just a little door we feed through. After him speaking to me I just looked toward him.

Q. About how wide is that little door?

A. Oh, probably that wide (indicating); maybe that high (indicating).

Q. For the record, how wide would you say that is?

A. Oh, probably about 12 by 12.

Q. Is there any glass in that door?

A. No.

Q. Just three bars.

A. Three or four, yes.

Q. And did you get a chance to see his face?

A. Yes, I could see just the face.

Q. And did you see any marks on his face?

A. I did not.

Q. You didn't see any marks at all?

A. No.

Q. You didn't see any marks near his right eye?

A. I did not.

[fol. 271] Q. Nothing at all?

A. I didn't see anything.

Q. Was the light on in the cell?

A. Well, the cell wasn't dark. It was just the normal lights on on the outside, but as to whether there was a light on in the cell, I don't remember whether there was or not; but one end of the cell is barred in and the light from the windows outside comes in.

Q. Do you know whether or not there were any lights outside the window?

A. Yes, there's some down the walkway on the other side of the cell.

Q. Do you know whether or not these lights were on?

A. I do not.

Q. Now, I believe that you testified that at this time when you saw the defendant in the cell on the third floor of the Ware County jail you said he stated that he had been involved with a white woman? Is that right?

A. That's right.

Q. And that he said he'd raped a white woman? Is that right?

A. That's what he told me.

Q. Now, this is the first time you've ever testified in those words, isn't it?

A. I believe I testified at the other trial similar to it.

Q. I'll read you back your testimony: "Question (By Mr. Hayes): Now, what did he tell you up there? "Answer: Well, getting to back when he asked me was I working up there, and I told him yes, I asked him what was he doing in there, and he said he had been put in there for molesting a white woman. I said, 'In Folkston?' He said, 'Yes.' And I asked him what happened, and he started to tell me, and I said, 'Have you talked to anybody about this?' He [fol. 272] says, 'No'. I said, 'Would you be willing to make a statement to that effect?' He said, 'I will.' And, in turn, I went down to Sheriff Lee and told him what was said. Sheriff Lee, in turn, contacted Sheriff Sikes, and he told him to go ahead and get a statement, and the sheriff sent me upstairs and I brought the subject down and we obtained a statement from him."

Now was that your testimony at the previous trial?

A. Yes, it was.

Q. And you said in your previous testimony that the defendant, Isaac Sims, said he had been put in there for molesting a white woman. Is that right? Is that right?

A. But he also said what I stated.

Q. Is that the first time you ever testified to that effect?

A. Said what he had done, yes.

Q. You never testified in that manner?

A. Not as I remember I didn't.

The Solicitor General: Your Honor, he's getting into technical legal meanings—I suggest that the word "molest" and "rape" have the same interchanging meaning, and he's trying to get some kind of legal meaning out of it.

The Defendant's Attorney: Your Honor, I ask the Court to instruct the jury that these two words have different legal meanings.

The Court: Well, go ahead.

The Defendant's Attorney: I ask the Court to instruct the jury that "molest" and "rape" are not interchangeable terms.

The Court: Well, I think the jury heard the testimony. They can make up their own minds.

Q. (By the Defendant's Attorney) Now, when this conversation took place between you and the defendant Sims—[fol. 273] the testimony that I've read from here was your testimony in October of 1963? Is that correct?

A. As far as I know, yes.

Q. And your memory would be fresher then, wouldn't it?

A. Would be what?

Q. Your memory would be fresher than it would be now, wouldn't it?

A. I don't know whether it would or not.

Q. October of 1963 is certainly closer to the time than October, 1964, isn't it?

A. Yes, but I still remember what was said.

Q. You remember better now than you did then?

A. No, I wouldn't say I remember better, but I know what was said.

Q. You omitted to testify that?

A. I probably didn't tell it.

Q. But you were asked?

A. I don't know whether I was asked about that one specific question or not.

Q. The question asked by Mr. Hayes was: "Now, what did he tell you up there?"

A. You ask me what he told you up there?

Q. Yes.

A. The same thing that I stated—that he had molested a white woman.

Q. Now, at what time of the evening was it when you had this conversation with the defendant, Isaac Sims?

A. About 6:30.

Q. About 6:30?

A. Yes.

[fol. 274] Q. And where was Sheriff Lee at that time?

A. I don't know, personally, where he was at that time. I tried to get him at his home a little later on.

Q. So you didn't quite mean what you said when you testified that you went downstairs and got Sheriff Lee?

A. We got to go downstairs to get him, for he doesn't stay upstairs.

Q. But you don't mean that he was downstairs when you came downstairs, do you?

A. When I say I go downstairs to get him, I mean I go down to try to locate him.

Q. And you located him by telephone?

A. Yes.

Q. Was he down there?

A. No, he was not down there.

Q. You called him?

A. Right.

Q. Where did you call him?

A. To his home.

Q. Was he there?

A. Yes.

Q. About what time did he come to the jail?

A. Oh, I don't know. He was busy and came down a little later, but I don't know how long it was.

Q. He came down to the jail before 10:30, didn't he?

A. Yes.

Q. As a matter of fact, he had been down to the jail for about two and a half hours, hadn't he?

A. I don't know exactly how long he'd been down there.

Q. Would it have been about two and a half hours?

A. That I don't know. No way of knowing.

[fol. 275] Q. But you do know that he came to the jail before 10:30?

A. Yes, he did.

Q. Now, did you bring the defendant downstairs when the sheriff came?

A. No, I did not.

Q. You never did bring the defendant down?

A. No, the jailer. The sheriff told me to bring him on down, and I in turn told the jailer to bring him down.

Q. Now, had the defendant been waiting for the sheriff to get through with his other business before——

A. I don't know whether he had or not.

Q. Was he brought downstairs before 10:30?

A. Well, we brought him straight on down and started talking to him, and the time that I started talking to him was the time I put on this statement—10:30.

Q. So, you brought him down and started talking to him——

A. (Interposing) I didn't bring him down. The jailer brought him down and turned him over to us.

Q. Do you know whether the jailer brought him down at 10:30 or not?

A. Well, he started the statement at 10:30, and it was a minute or two after he brought him down before we started talking to him.

Q. So you know exactly when the jailer brought him down?

A. Well, I looked at my watch when I made the statement out. It says 10:30.

Q. Now, I believe you testified that Mr. Worley was there and Chief Johnson was there, in addition to yourself and the sheriff? Is that right?

A. That's right.

Q. And that Chief Johnson and Mr. Worley sat about [fol. 276] ten or twelve feet away from you and the sheriff and the defendant? Is that right?

A. Well, about eight or ten feet, or somewhere in that neighborhood, yes.

Q. And they were sitting next to each other? Right?

A. I think so.

Q. And you and the sheriff and the defendant were sitting at a table? Is that right?

A. Right.

Q. And you say the table was about 6 by 3?

A. The table was similar to the table that you've got there. Maybe just a little bit longer and maybe a little wider, but a table just like you got right there.

Q. About thirty-six inches high?

A. Yes.

Q. And the defendant sat at that end of the table there?

A. Right.

Q. And that was near the door?

A. Right.

Q. You sat about where Mr. Hayes is sitting?

A. About the middle of the table on the other side.

Q. About where Mr. Griffin is sitting?

A. Right.

Q. And the sheriff sat at the end of the table like that? Is that right?

A. Yes.

Q. And as the sheriff sat there and the defendant sat there and you sat here you wrote down what the defendant was supposed to say? Is that right?

A. What he did say.

Q. You wrote it down?

A. His words, yes.

[fol. 277] Q. Now, who was asking the questions?

A. Well, he just was talking to us about the thing. The sheriff told him to go ahead and tell just what happened, and he told us what happened, and I copied it just as near as I could what he said.

Q. There are some things that you copied in the statement that the defendant didn't say? Is that right?

A. Only with the exception of "freely and voluntarily" —do you want me to read here what he didn't say and what he did say?

Q. I'll ask you the questions. There were somethings that you put on the paper that the defendant did not say? Is that right?

A. That was about freely and voluntarily, and all, yes, but anything subject to what had happened is what he said.

Q. All right. And you put things at the beginning of the statement that the defendant didn't say? Isn't that right?

A. That is right.

Q. And you put some things at the end of the statement that the defendant didn't say? Is that right?

A. That's right.

Q. So, everything that's on the statement isn't what the defendant said? Is that right?

A. As already stated, the things that the defendant said are included in this statement, plus what I put forward and aft of it, about freely and voluntarily, and such like.

Q. Now, as you sat there and wrote the statement out in longhand the defendant didn't tell you how to punctuate it, did he?

A. No, he didn't.

Q. As a matter of fact, he didn't tell you how to spell the words, did he?

A. No, he didn't.

Q. You did all that yourself?

A. That is correct.

[fol. 278] Q. Now, the sheriff asked the defendant some questions, didn't he?

A. I don't remember whether he did or not.

Q. You don't know whether he asked questions or not?

A. No. He told him to tell as near as he could exactly what happened.

Q. You knew the defendant couldn't read or write, didn't you?

A. Not until he told me that he couldn't read.

Q. And you had been knowing him about twelve years, hadn't you?

A. Yes, but I didn't come in that close contact to ever have him to write anything for me or read anything for me.

Q. And the defendant thought you would be kind to him, didn't he?

A. I don't know. I never mistreated him. I never have.

Q. And the defendant thought you would be his friend? Is that right?

A. I don't know whether he did or not.

Q. As a matter of fact, you were the only person over there in the jail that the defendant knew? Isn't that right?

A. I don't know.

The Solicitor General: Your Honor, I object to that. That would be a conclusion. He doesn't know who the defendant knew.

The Court: Well, I don't think he could say.

The Defendant's Attorney: I withdraw the question, your Honor, and put it in other words, if I may.

Q. You knew that the defendant was not acqainted with Sheriff Lee, didn't you?

A. I didn't know that.

Q. You knew Sheriff Lee didn't know the defendant, didn't you?

The Solicitor General: Now, your Honor, that calls for a conclusion. He doesn't know what the sheriff knew or [fol. 279] what he didn't know. It's impossible to know.

The Court: Well, I agree with you.

Q. (By the Defendant's Attorney) Now, Mr. Dudley, you didn't explain to the defendant what is meant by the statement can be used against him in court, did you?

A. The sheriff did.

Q. The sheriff did?

A. Yes.

Q. What did the sheriff say?

A. He advised him of his rights; that he had a right to an attorney, and nobody would hurt him, and the statement that he was signing could be used against him in a court of law. He said that was all right.

Q. He said that was all right?

A. Yes.

Q. Now, you didn't try to find out whether the defendant, in fact, understood what was said, did you?

A. The sheriff was in charge of what was going on in there, and he advised him.

Q. So your answer would be that you didn't? Is that right?

A. Do what, now?

Q. Your answer would be that you didn't do anything to find out whether or not he understood what the sheriff was saying?

A. Well, he asked him in plain language did he understand that this could be used against him, and advised him of his rights and everything else.

Q. Now, Mr. Dudley, you are a law enforcement officer. Is that correct?

A. Yes.

Q. And you have been a sheriff in this county for about seven years?

A. No, I served about six and a half as deputy in this county.

[fol. 280] Q. And you were a law enforcement officer some place else before then, weren't you?

A. Right.

Q. About ten years?

A. Right.

Q. Where was that?

A. Fernandina.

Q. Fernandina, Florida?

A. That's right.

Q. And you've been over in Ware County about how many years?

A. Three and a half or four, or somewhere along there.

Q. So, for about twenty years you've been a law enforcement officer?

A. That is right.

Q. And you understand these things, don't you?

A. I think I do.

Q. And you think that you understand these things better than the defendant, don't you?

The Solicitor General: Now, your Honor, that would be a conclusion. He doesn't know what the defendant understands. He couldn't possibly know.

The Court: I think you could ask him what he understands, but what he thinks the defendant understands I don't think would be admissible.

The Defendant's Attorney: I withdraw that question.

Q. Mr. Dudley, these legal matters like you put on the front of that statement and at the end of the statement are pretty well understood by you, aren't they?

A. Yes.

Q. And even sometimes now you get confused when you go to court? Is that correct?

A. I think we all do.

[fol. 281] Q. Now, the defendant hadn't had any visitors prior to the time the statement was made, had he?

A. That I don't know. Not being the jailer I don't know whether he had or not.

Q. You didn't see any visitors?
A. No, I did not.
Q. Now, you didn't tell the defendant he had a right to make telephone calls from the jail, did you?
A. No, I did not.
Q. You did not?
A. No. He didn't ask.
Q. And you didn't tell him?
A. No, I did not.
Q. Did you ever offer to call the defendant's family?
A. He didn't ask me to. I didn't offer, either.
Q. And you didn't offer to call a lawyer?
A. No, he didn't ask me to.
Q. And you did not offer to call?
A. I did not.

The Defendant's Attorney: The witness is with you.

Redirect examination.

Q. (By the Solicitor General) Do you know his family?
A. Not as I know of.

The Solicitor General: You can come down.

(Witness excused)

(Whereupon, at 10:40, P. M. a short recess was taken).

After recess.

The Court: You may proceed.

Robert E. Lee was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

[fol. 282] Q. (By the Solicitor General) Will you state your name for the record?
A. Robert Lee.
Q. What position do you hold in Ware County, if any?
A. Sheriff of Ware County.
Q. Were you sheriff in April, 1963?

A. Yes, sir.

Q. Sheriff, do you remember the occasion back on April 13th, 1963, when Nola Jean Roberts was raped?

A. Yes, sir.

Q. Sheriff, I will ask you if you had an occasion to see the defendant, Isaac Sims, here before.

A. Yes, I have.

Q. Sheriff, did you see him on the 13th day of April last year—'63?

A. Yes, sir.

Q. About what time of day or night did you see him?

A. Approximately 10:30 P. M.

Q. And where did you see him?

A. In the jail in Ware County.

Q. And whereabouts in the jail?

A. Downstairs in the interview room.

Q. Did you ever see him any other place in the jail except in the interview room?

A. Later upstairs on the third floor later. Not that night. It was several days later.

Q. You did see him sometime later up there?

A. Yes.

Q. But I'm talking about on this night.

A. That's the only time.

Q. And when you first saw him on April 13th that night was anybody else in the interview room except you and the [fol. 283] defendant Sims?

A. Three other persons.

Q. Who was that, Sheriff?

A. Dudley Jones, Estis Johnson, and B. C. Worley.

Q. Did the defendant make any statement to you or in your presence?

A. Yes, he did.

Q. Who was the presiding officer there?

A. I was.

Q. Who was in charge?

A. I was.

Q. What were the circumstances surrounding him making that statement?

A. I received a call from Dudley Jones, Deputy Sheriff.

Q. Don't tell what he said. Now, you received a call, and what happened?

Is that correct?

A. That's correct.

Q. It says, "I was driving down the St. George highway." Is that right?

A. That's the statement he made.

Q. And it's all written on your stationery? Is that right?

A. Right.

Q. And there are some words that were crossed out? Is that right?

A. One word crossed out there was "approx".

Q. And another word is crossed out down there? Is that right?

A. The word crossed out down here is "lady's".

Q. And there's another word that's crossed out, isn't it?

A. Well, that's not a word there.

Q. But it is crossed out, whatever it is?

A. Well, that's not a word.

Q. But it is crossed out, isn't it?

A. Right.

Q. All right. Now, that's Page 1, isn't it? Now, the defendant didn't tell Mr. Jones to cross it out, did he?

A. That's how come it crossed out.

[fol. 289] Q. He told him to cross it out?

A. It was read back to him.

Q. And the defendant said, "Cross it out"?

A. Right.

Q. What about down here where there is no word?

A. Down where?

Q. Down here at the bottom of the page.

A. Well, there wasn't supposed to be a word there.

Q. The defendant didn't tell him to cross out any word that wasn't supposed to be there, did he?

A. Well, I don't know about that.

Q. So, these corrections down here, they are not initialed by the defendant, are they?

A. You notice here—you see this "approx", and "approx" is marked, and "about" put in. He said "about". "Approximately" and "about" mean about the same thing. Either word would have been all right in there, but he used the word "about".

Q. He didn't initial that change, did he?

A. No.

Q. And originally it was put up there "in color", wasn't it, and that was crossed out?

A. Where is that?

Q. See right here. See where that "approx" is crossed out there are two crossed out words.

A. Well, it's stated "1953 or 54 Bel Air Chevrolet, brown and white in color"——

Q. The "color" is crossed out, isn't it?

A. Right. And the "white" is still on there.

Q. But the "color" is crossed out?

A. Right.

Q. Now, when the defendant said that he was at the home, in this statement, of a girl named Marguerite?

[fol. 290] A. Right.

Q. Are you sure it wasn't "Margie"?

A. That's the word he gave.

Q. And you are sure that he gave the word "Marguerite"?

A. Right.

Q. And not "Margie"?

(No response)

Q. Now, I notice the statement on the last page, which is the fourth page, isn't it?

A. Right.

Q. And it says, "I have read"—and that's crossed out. Isn't it?

A. How come that crossed out, he didn't read it, and the words "I have read"—the word "read" is marked out, and "I have had this statement read to me."

Q. The word "read" was written in there before you found out he couldn't read?

A. Well, that's how come that marked out—because he couldn't read. It had to be read back to him.

Q. I'm asking you a question now——

A. (Interposing) That word would have been in there if he could have read it.

Q. Now, Sheriff Lee, the word "read" is crossed out, isn't it?

A. Right.

Q. You crossed that out after you learned that he couldn't read, didn't you?

A. Well, if he could have read the word would have been

A. After going down to the jail I telephoned Sheriff Sikes, and then Isaac Sims was brought downstairs to the interview room, and in the presence of three others I've named and myself he made a statement.

Q. At whose request did he come down and make the statement?

A. He came down—he made the statement that he wanted to make a statement of what had happened.

Q. And, Sheriff, when the statement was made did you or anyone else promise him anything to make a statement?

A. No, sir. He was advised by me that his statement could be used against him in court, and that before he made a statement he was entitled to an attorney.

Q. Was he induced by you or anybody else to make any statement?

A. Yes, sir; I——

Q. (Interposing) Was he induced by you?

A. I identified myself and the other three officers.

[fol. 284] Q. You didn't understand the question.

The Defendant's Attorney: I think the witness answered it.

The Solicitor General: I asked him if he or anyone else induced him to make a statement.

The Defendant's Attorney: He didn't answer like the Solicitor wanted him to.

Q. (By the Solicitor General) I will re-ask the question, Sheriff: Was he induced by you or anybody else to make a statement?

A. No, sir.

Q. Was the slightest hope of benefit or reward offered to him to make a statement?

A. No, sir.

Q. Was the remotest fear of injury put to him in any way?

A. No, sir. He made the statement freely and voluntarily.

Q. Did you advise him of his Constitutional rights?

A. Yes, I advised him that before he made a statement he was entitled to an attorney.

Q. Did he say he wanted one or didn't want one?

A. He said he didn't want one.

Q. All right, what else did you advise him?

A. I advised him that the statement he was going to give could be used against him in court.

Q. Sheriff, was that statement reduced to writing?

A. Yes, it was.

Q. Who took it down?

A. Dudley Jones.

Q. Sheriff, I will hand you Exhibit No. 2 for the State and ask you to examine it. Let me ask you this: At whose direction was the statement made? Who was in charge of it?

A. I was.

[fol. 285] Q. Will you examine Exhibit No. 2 for the State that I just handed to you?

A. This is the statement that was taken by Deputy Sheriff Dudley Jones on the night of April 13, 1963, in the presence of myself, Chief Johnson, Dudley Jones, and B. C. Worley.

Q. Was it made under your supervision and control?

A. Yes, sir.

Q. Is that the statement that was made?

A. Yes, sir; this is the statement that was made. It consists of four pages. Isaac Sims signed each page at the bottom.

Q. Will you read that statement to this jury?

The Defendant's Attorney: Your Honor, I object and move that the witness' testimony be stricken from the record on the same ground, without repeating it, that I moved to exclude Mr. Dudley's testimony, because the foundation to make that statement admissible has not been laid. I raise the same objection.

The Court: I overrule the objection.

Q. (By the Solicitor General) Go ahead and read it.

The Defendant's Attorney: Your Honor, we'd like to have the opportunity to examine this witness before the statement is read into the record.

The Court: All right.

The Solicitor General: Would you like to do it at this time?

The Defendant's Attorney: I believe the rule requires that the jury be excused.

The Court: All right, let the jury go to the jury room.

(The jury thereupon retired from the court room.)

The Solicitor General: I was under the impression that he had already examined Sheriff Lee this morning concern-
[fol. 286] ing this statement, and that is a matter of record.

The Court: All right.

The Defendant's Attorney: As your Honor knows, the rule has been recently changed by the Supreme Court of the United States, and we did have an opportunity to examine the witness today, and on that basis, your Honor, I withdraw my request that the jury be excused and let him proceed with the direct examination. I don't know whether the procedure being followed at this time satisfies the rule decided by the Supreme Court on June 22nd, 1964, that the Court must make judicial determination whether the statement was made voluntarily before it is read to the jury. We did make an examination today, and I withdraw the request for the jury to be excused.

The Court: All right, bring the jury back.

(The jury thereupon returned to the jury box.)

Q. (By the Solicitor General) Now, Sheriff, would you read the statement that the defendant made on that occasion—read it to the jury.

A. The dated, "4-13-63. 10:30, P. M. I, Isaac Sims, Jr., age twenty-seven, resident of Folkston, Georgia, make the following statement, freely and voluntarily. I have not been promised anything—I have not been threatened or promised anything. I know that this statement can be used against me in court. I, Isaac Sims, Jr., on April 13, 1963, was driving Cleo Jackson's 1953 or 54 Bel Air Chevrolet, color brown and white, about 10 o'clock, A. M. I was driving down the St. George highway. I drove up behind a white woman driving a new looking car, color white. I was drinking whiskey at the time. The closer I got to her car I had a feeling to have dealings with this white woman. I took the car I was driving, bumped this lady's car several times. Finally I knocked her car into the ditch. I got out
[fol. 287] of my car, and as she got out of her car I grabbed her. I pulled her across the road into some bushes. She was wearing pedal pushers, grey looking. She kept fighting me, and I hit her in the face, knocking her down. She kept hollering for help. Then I was afraid someone would hear her, so I choked her. Then I tore her pedal pushers off. She was in her monthly period. She had a Kotex on.

I pulled that off of her and forced her to have intercourse with me. When I finished I walked back to where the car I was driving was parked. I could not get my car started. It would not crank. So then I realized I was in trouble, and I ran through the woods to Mr. Walter Hopkins' place at Toledo, a distance of about ten miles. Some colored boys told me there was a lot of people and dogs hunting someone. These colored boys went to Mr. Stokes' and told him where I was, at the home of a girl named Marguerite. Mr. Stokes and another white man came and picked me up and carried me to the sheriff. The pants and shorts I was wearing had blood on them.

"This statement is made freely and voluntarily in the presence of Sheriff Lee, Ware County, Georgia, Chief Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, Ware County, Georgia, and B. C. Worley, Constable 1231st District of Ware County, Georgia.

"I have been informed of my legal rights by Sheriff Robert E. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law.

"I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me.

"Witness: Robert E. Lee, Sheriff of Ware County, B. E. Johnson, Chief of Ware County Police, Dudley Jones, Deputy Sheriff, B. C. Worley, Constable."

Q. Who is it signed by, Sheriff? Is it signed?

[fol. 288] A. Yes, sir; signed by Isaac Sims.

Q. Is that the defendant over here?

A. Yes, sir.

Q. Did you see him sign it?

A. Yes, sir.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Now, Sheriff Lee, this statement here says, "I was driving down the St. George highway". Then there is something that is scratched out. "I drove up behind a white woman driving a new looking car, color white."

left on there. He would have read it instead of having it read back to him.

Q. But it was crossed out after you learned that he couldn't read?

A. I don't know—I still don't know whether he can read or not.

[fol. 291] Q. But you know that is crossed out—"I have read"?

A. That is crossed out.

Q. You go along, and it says, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

Now, there are only three pages of statement?

A. There are four pages there.

Q. You include the last page?

A. There are four pages you've got in your hand there.

Q. But the last page only says, "I"——

A. (Interposing) That's part of it.

Q. All four pages are part of the statement?

A. There are four pages of it.

Q. Was this word "read" stricken out before the rest of the sentence was written out?

A. I just stated a minute ago that if he had read the statement himself that would have stayed in there.

Q. Yes, sir; I understand that. I'm clear on that, now, but what I'm trying to get clear on now was the word "read" stricken out by Mr. Jones before the rest of the sentence was written out.

A. I don't know about that.

Q. Is that why there are two "reads" in the sentence?

A. How is that?

Q. There are two "reads" in the sentence—one is stricken out.

A. Well, if he had been able to read the statement that word would have been in there.

Q. Now, did you strike the word "read" out after the entire statement was written out?

A. I don't recall.

Q. Did you strike it out before or after the defendant signed it?

A. It was all stricken out just like you've got it now whenever he signed it. He signed each page.

[fol. 292] Q. So, before this statement was written out completely you knew that he couldn't read?

A. Except what he told me.

Q. And that accounts for the "have read" being stricken out?

A. I still don't know whether he can read or not. I just take his word for it.

Q. You believed him when he said it, didn't you?

A. Just what he told me was put down.

Q. Now, the substantive part of this statement consists of three pages, doesn't it?

A. That's right.

Q. And the fourth page is only a formal part of the statement? Isn't that right?

A. Right.

Q. And it says on that, "I have had this statement read to me, which consists of four pages, which is a true and correct statement made by me."

A. There are four pages.

Q. Including this page right here?

A. That's right.

Q. Now, Mr. Sheriff, what time did you call on the defendant to come from the jail?

A. I really don't know.

Q. About what time?

A. Well, if I was just to make a guess—I really don't know what time it was.

Q. Was it in the morning or in the afternoon.

A. It was in the afternoon—at night—the first part of the night.

Q. It was after 6 o'clock?

A. I couldn't say.

Q. Now, let me ask you this, Sheriff Lee; were you called by telephone?

[fol. 293] A. I was either called on my radio or either the telephone. I don't recall which it was.

Q. Does the radio hook up and connect with your house?

A. How is that?

Q. Does the radio hook up or connect with your house?

A. No.

Q. If you were called by radio does that mean that you were in your car?

A. Right.

Q. Do you know whether you were called by radio or called by telephone?

A. I couldn't say.

Q. What's your best recollection?

The Solicitor General: He's already told him he didn't know.

The Court: All right.

Q. (By the Defendant's Attorney) Let me ask you this, Mr. Lee: Is it your testimony that you were called at home or in your car?

A. I didn't say I was called at home and I didn't say I was called in my car. I said I had been called on one of the two.

Q. Do you know which one?

A. I don't know.

Q. Would your testimony be the same if I told you that Mr. Jones, Dudley Jones, testified that he telephoned you at home?

A. Well, if he said he called me at home, if I was at my house and he called me, that's probably correct, because I don't recall it.

Q. Now, do you recall testifying in court in October, 1963?

A. Yes.

Q. And do you recall being asked this question by Mr. Hayes: "Question: Now, were you called down to your office by one of your officers?" "Answer: Yes, sir; by radio."

[fol. 294] A. Well, that could be correct. I just stated by radio or either by telephone.

Q. So, Mr. Jones was in error, then?

A. I wouldn't say. I will say now like I did a minute ago, that I was called by telephone or either by radio.

Q. Now, prior to the time that you were either called by radio or by telephone did you know anything about this case?

A. Except what little bit I heard on the radio.

Q. You mean on the news radio?

A. On the car radio.

Q. The car radio?

A. Yes.

Q. You mean you received the signal on the car radio?
A. Right.
Q. But, before you came down to the jail house you had some knowledge that this offense had been committed? Is that correct?
A. What little I'd heard on the radio.
Q. And you knew that the defendant, Isaac Sims, had been brought to the jail?
A. I knew he was in the Ware County jail.
Q. And you got that over the radio?
A. Well, I wouldn't say whether I got that part over the radio or found it out there at the jail.
Q. But you do know that radio signals were being sent by whom?
A. Well, I couldn't say who. There were several officers using the radio. I couldn't tell you which one.
Q. Did you learn about this in the afternoon of April 13th or in the evening?
A. It was late in the afternoon.
Q. Was this before 6 o'clock?
A. I couldn't say what time it was.
[fol. 295] Q. Did you have any conversation with Sheriff Sikes?
A. Yes, I did.
Q. Was that conversation prior to the time you went to the jail?
A. I talked with Sheriff Sikes from the jail.
Q. From the jail?
A. Yes.
Q. You hadn't talked with him before that?

(No response)

Q. You talked with Sheriff Sikes before you took the statement?
A. Right.
Q. You knew that Sheriff Sikes had sent the prisoner up to the jail for safe keeping, didn't you?
A. I knew that he was sent up to the Ware County jail. I knew he was in the Ware County jail.
Q. Do you remember testifying here in October, 1963?
A. Yes.
Q. Do you remember this question being asked you: "Why did you have this defendant in your jail, Sheriff?"

"Answer: Sheriff Sikes sent him up for safe keeping." "Question: For safe keeping?" "Yes".

So, you knew he was in there for safe keeping?

A. That's right. I knew he was in there.

Q. And you were asked another question: "What do you mean by safe keeping, Sheriff?" And your answer was: "Well, usually when something like this happens it is better for a prisoner to be kept in a different county."

Was that your answer?

A. That's correct.

Q. And the next question was: "For what purpose?" "Answer: Well, I think maybe in this case Sheriff Sikes' jail wasn't sufficient, for one reason." And then you were asked: "In what way? Do you know why it wasn't suffi-
[fol. 296] cient?" "Well, I wouldn't know to that extent."

Do you remember being asked that in October, 1963?

"Now, do you know, Sheriff, whether or not at the time the prisoner arrived at your jail until this statement was taken whether he was visited by anyone?" And your answer was, "Not that I know of."

And you testified earlier that he was not represented by a lawyer, did you?

A. That's correct.

Q. You knew that the sheriff, Mr. Sikes, wasn't looking for anybody else for this offense, didn't you?

The Solicitor: Now, Your Honor, I object to the question as being a conclusion. He couldn't possibly know what Mr. Sikes was doing.

The Defendant's Attorney: Well, your Honor, he talked with Mr. Sikes.

The Court: Well, I think he can ask him if he knew.

Q. (By the Defendant's Attorney) Do you know whether or not Mr. Sikes—Sheriff Sikes—was looking for anyone else?

A. I really don't know.

Q. But you had talked to him prior to taking the statement?

A. Right.

Q. Now, you didn't read the statement back to him yourself, did you?

A. Mr. Jones read it back.

Q. Now, you made no effort prior to the time you took

this statement to bring Isaac Sims before a Justice of the peace or other magistrate, did you?

A. I did not.

Q. You had no warrant for the arrest of the defendant, did you?

A. I don't recall whether there was a warrant there at [fol. 297] the time or not. I wouldn't say whether there was a warrant or there was not.

Q. You had no knowledge of the offense and the manner in which it had been committed other than what you got over the radio? Is that correct?

A. Just what little I heard over the radio and what Isaac told me in the statement.

Q. So, at the time the statement was taken all of the knowledge you had about the offense was a matter of hearsay? Is that correct?

A. From the statement Isaac gave me I knew more about it then than I did before.

Q. All right, then, let me ask you this question: Just prior to the time you took the statement the only knowledge you had about the offense was hearsay?

A. Right.

The Defendant's Attorney: Your Honor, we have terminated the examination, and we move that the statement that was read into the record be quashed, and that the jury be instructed to disregard the statement, the grounds being that it was not made in compliance with the 4th, 5th, and 6th Amendments to the United States Constitution as made applicable to the several States by the 14th Amendment thereto, and by virtue of Article 1, Paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945.

We move on constitutional grounds, your Honor, that all testimony relative to the statement and the statement itself be excluded from the evidence and that the jury at this time be instructed to disregard the statement.

The Court: I will overrule that motion. Go ahead.

[fol. 298] Redirect examination.

Q. (By the Solicitor General) Sheriff, isn't it true that all the prisoners are kept in your jail for safe keeping?

A. Partly, yes.

Q. He asked the question if you had taken him before a

magistrate before he made the statement you referred to—now, this was on a Saturday night, wasn't it, Sheriff?

A. Right, Same night that the crime was——

Q. Was Judge Hodges in the court house at that time of night?

A. No.

Q. Was there any other judge available at that time of night?

A. No, sir.

Q. Was there any judge available to take him before at that time?

A. Not at that time of night, no, sir.

The Solicitor General: You can come down.

Recross examination.

Q. (By the Defendant's Attorney) Sheriff, did you make any attempt to ascertain whether or not any judge was available at that time?

A. Sheriff Sikes was attending to that.

Q. But I asked you did you make any attempt to find out?

A. Not after the conversation I had with Sheriff Sikes, I didn't.

Q. Approximately how many Justices of the Peace are there in Ware County?

A. One for each—well, two in the 1231st.

Q. What about in Waycross?

A. Well, that covers that.

Q. They live in Waycross?

A. Right.

Q. Did you make any attempt?

[fol. 299] A. I just stated after I talked with Sheriff Sikes that I made no attempt after the conversation with him.

Q. And you don't know whether or not Sheriff Sikes——

A. (Interposing) I do not.

The Defendant's Attorney: Thank you.

The Solicitor General: You can come down.

(Witness excused)

F. F. CORNELIUS was thereupon called as a witness in behalf of the State, and, having been duly sworn, testified as follows:

Direct examination.

Q. (By the Solicitor General) Your name is F. F. Cornelius?

A. Yes, sir.

Q. And you are with the Georgia Bureau of Investigation?

A. Yes, sir.

Q. And you were with them back in April, 1963.

A. Yes, sir.

Q. Mr. Cornelius, have you seen this defendant here, Isaac Sims, Jr., on a previous occasion?

A. Yes, sir.

Q. Do you recall the occasion back when Nola Jean Roberts was raped on or about the 13th day of April, '63?

A. Yes, I do.

Q. Do you recall what day of the week that was?

A. On Saturday.

Q. And did you talk to this defendant on the Monday following that?

A. Yes, I did.

Q. And where did you see him on that Monday?

A. I saw him at the jail at Waycross and brought him down here to Folkston.

Q. Did he make any statement to you during that time?

[fol. 300] A. I had a copy of this (indicating)——

Q. Excuse me, Would you examine Exhibit No. 2 for the State?

The Defendant's Attorney: Your Honor, I object to this. I don't know the purpose of it. He certainly doesn't need to have his recollection refreshed.

The Solicitor General: I wanted him to examine it. He's objecting to it when he didn't know what I was going to ask him about it.

The Defendant's Attorney: Your Honor, he wasn't there when the statement was taken, and it would certainly be hearsay as to the witness.

The Solicitor: The only thing I've asked him to do was to examine the document.

Q. Have you examined the document?

A. Yes, I have.

Q. Have you previously seen this document. Exhibit No. 2 for the State?

A. Yes, sir.

Q. And are you familiar with the contents of it?

A. Yes, I am.

Q. Have you read the defendant, Isaac Sims, the contents of that statement?

A. Yes.

Q. Have you read it to him?

A. Yes, I have.

Q. Where were you when you read it to him?

A. I was down in the sheriff's office right here in the court house.

Q. When was that?

A. That was on Monday afternoon, on April 15, '63, about one o'clock in the afternoon, if I'm not mistaken.

Q. Did you read the entire statement to him?

A. Yes, I did.

[fol. 301] Q. Did you ask him any questions about the statement?

A. I asked him if that was true, and he said, "Yes, sir; that is right."

The Defendant's Attorney: I object to that, your Honor, I move that that be stricken on the basis that no proper foundation has been laid.

The Solicitor General: I think that would be proper, your Honor, and I will lay the foundation.

The Court: All right.

Q. (By the Solicitor General) Mr. Cornelius, prior to you reading that to him, now, at the time was he induced by you or anybody else to make—to answer this question?

A. No, sir.

Q. Was he promised anything by you or anybody else to make a statement?

A. No, sir; he was not.

Q. Was he threatened in any way?

A. No, sir.

Q. Was the remotest fear of injury put to him?

A. No, sir.

Q. Was his answer voluntary?

A. Yes.

Q. Now, in relation to Exhibit 2 for the State, what name appears on the bottom as being signed there?

A. Isaac Sims, Jr.

Q. And are the contents of Exhibit 2 what you read to the defendant on this occasion?

A. Yes, that's right.

Q. And did you read him all the statement?

A. Yes, I did.

Q. Did you ask him any questions when you read the statement to him?

A. I asked him if that was right, and he said, "Yes, that [fol. 302] is right."

Q. And when was that and where was it?

A. In the sheriff's office on Monday, April 15th, after it occurred on April the 13th.

The Solicitor General: He's with you.

Cross examination.

Q. (By the Defendant's Attorney) Mr. Cornelius, on April 15th, 1963, in the sheriff's office there the defendant wasn't represented by an attorney, was he?

A. Not at that time, no.

Q. And you didn't have a warrant for his arrest, did you?

A. There was a warrant, yes.

Q. Did you have it?

A. We had the warrant when we brought him from Ware County jail to Charlton County.

Q. Who issued the warrant?

A. I don't remember.

Q. Who applied for the warrant?

A. That I do not know.

Q. Where is the warrant now?

A. I don't know.

The Solicitor General: I will state to counsel that if he wants the warrant if he will ask for it it will be made available to him.

The Defendant's Attorney: Thank you.

Q. Mr. Cornelius, now, on April 15th down in the sheriff's office who was present?

A. A. H. Holley, a State Revenue Agent, J. A. Barfield,

Chief of Police of Folkston, Georgia, Marvin Lloyd, a policeman of Folkston, Georgia, Billy Brooks, a police officer of Folkston, Georgia, and Homer W. Allen, a Deputy Sheriff.

Q. Were all these police officers in uniform?

[fol. 303] A. I believe so, yes.

Q. Did they have on their weapons?

A. I don't remember specifically whether they did or not, but I'm sure some of them did. I wouldn't say yes or no, whether they all had them on or not.

Q. But some of them did?

A. I presume they could have or could not. I don't specifically remember. A lot of them wear uniforms without wearing side arms.

Q. Now, you are with the State Patrol, aren't you?

A. I'm investigator for the State.

Q. For the State of Georgia?

A. Yes.

Q. To which division are you attached?

A. District No. 7.

Q. And what's your specific title?

A. Agent with the Georgia Bureau of Investigation.

Q. Known as the GBI?

A. Yes.

Q. You don't wear a uniform, do you?

A. No.

Q. But you carry side arms?

A. Right.

Q. Did you have it with you then?

A. At that time?

Q. Yes, sir.

A. Yes.

Q. Now, how large is the office where the defendant was on April 15th, 1963?

A. I never measured it, but just roughly I'd say 14 feet wide by about 22 feet long.

[fol. 304] Q. Was there anyone else of the negro race inside that office at the time?

A. People were going and coming. I mean, it wasn't any closed session. They were attending to other business, colored and white.

Q. Was the defendant handcuffed?

A. We did not have the cuffs on him down there, no.

Q. Had he been handcuffed?

A. He had in transportation from Waycross here.

Q. Did he have manacles on his feet?

A. No. Just handcuffs.

Q. Just handcuffs.

A. Yes.

Q. Was he handcuffed in front or behind his back?

A. In front.

Q. Did you tell him that he did not have to answer the questions?

A. I just read the same thing off to him that's on there.

Q. So, you didn't tell him?

A. No, but I read it just like this was.

Q. You didn't volunteer to call a lawyer, did you?

A. No, I did not.

Q. You didn't call a relative, did you?

A. I had already contacted his sister on Sunday morning, and I carried some clothes back to the Ware County jail for him.

Q. You contacted his sister—that's Mrs. Thomas, isn't it?

A. I don't even remember her name, but she lives out here on this St. George road.

Q. But you got some clothes from her?

A. She gave them to me and asked if I would carry them to him, and I said yes, I would.

Q. Had you been to visit the defendant in the Ware [fol. 305] County jail prior to the time you talked to his sister?

A. No.

Q. You hadn't?

A. No.

Q. How did you know that he needed clothes?

A. The late Sheriff Sikes and myself went down there talking to her and making an investigation and getting up witnesses, and she said that she believed he'd need some clothes, and asked me if I would carry them, and I said, "I sure will."

Q. Do you know whether or not she had visited up there prior to the time you talked with her on Sunday?

A. I don't believe she had. From what she said to me I don't believe she had. Now, I don't know.

Q. Do you know whether or not she had talked with the

defendant Sims prior to the time he was in the office downstairs on April 15th?

A. I don't know whether she had seen him between then or not.

Q. Approximately how far is Waycross from Folkston?

A. About thirty-five miles.

Q. So, as far as you know, at the time the defendant answered the question downstairs he had not seen a lawyer, he had not talked with his relatives? Is that correct?

A. That's right.

Q. Do you know whether any offer was made to assure him of a lawyer at that time?

A. I do not.

Q. You know that you made none?

A. That's right.

Q. Now, Mr. Cornelius, how did you happen to be involved in the case?

A. I was called in on it by the late Sheriff Sikes.

Q. Was that on April 13th, the day it happened?

[fol. 306] A. I was called on the night of April the 13th, and I came down on Sunday morning, on the 14th.

Q. You weren't present, then, over in Dr. Jackson's office, were you?

A. No, I was not.

Q. Did you go out to the scene?

A. Yes, I did.

Q. When did you go out to the scene?

A. It was on Sunday morning.

Q. The day following the alleged incident?

A. Yes.

Q. Did you make any investigation out there?

A. There had been too many people stomped around.

Q. In other words, you didn't make any investigation?

A. Not there. It would have been impossible.

Q. Was the car still there that was alleged to have been operated by the defendant?

A. The car had already been removed when the sheriff and I went down there the next morning around 11 o'clock.

Q. Do you know where the car was taken?

A. It was taken to a garage at St. George. Which one I do not know.

Q. Do you know who took the car there?

A. I do not.

Q. Do you know the condition of the car at the time it was taken away?

A. I understand it was burned. That is hearsay. I do not know.

Q. But it is your understanding that it was burned?

A. My understanding.

Q. Did you see any evidence of fire out at the scene when you were there?

A. Apparently it hadn't burned that bad, no.

[fol. 307] Q. But you did see some evidence?

A. I wouldn't say enough to say that there was a fire. I couldn't say.

Q. Did you recover a pocketbook or a purse belonging to Mrs. Crawford, now—pardon me, Miss Roberts, now Mrs. Crawford?

A. The only thing I know about is one that was in her car, and I didn't see the pocketbook.

Q. Did you ever examine her car?

A. No.

Q. Were you the chief investigating officer there?

A. Sheriff Sikes and myself.

Q. And would you say you equally ranked in authority?

A. No, Sheriff Sikes, being sheriff, was top law enforcement officer.

Q. But you were more specialized?

A. In some fields.

Q. Would these fields include gathering evidence?

A. Yes.

Q. Finger prints and things of that sort?

A. Yes.

Q. Foot prints and things of that sort?

A. Yes.

Q. Collection of hairs and clothing and things of that sort?

A. Yes.

Q. That would be your specialty?

A. Yes.

Q. And you collected none of these things with respect to this case, have you?

A. Her car and the other car had already been removed.

Q. Then, you didn't pursue the cars, did you?

A. No, I did not.

Q. When you saw the defendant at the Ware County jail

[fol. 308] did you have a chance to observe his person—his face?

A. I didn't pay him too much attention, because when I saw him on Sunday morning I just handed him the clothes, and that's about all.

Q. Did you ever have an opportunity to examine the shirt that he was wearing on April 13th?

A. I never did see the shirt, no.

Q. Did you ever see a bruised mark or a cut on his face?

A. Seemingly he had a mark on there. I couldn't say how bad or what.

Q. But you are very positive he had a mark?

A. He did have a skin, yes.

Q. Now, Mr. Cornelius, you've testified in this case about four times, haven't you?

A. No.

Q. Well, let's see if I can refresh your memory. Do you remember the incident that happened on April 15th, 1963, downstairs in the sheriff's office?

A. Right.

Q. And then you appeared in court again before—I believe before Judge Hodges on August 22nd, 1963?

A. I was at that hearing, yes.

Q. Now, this was a second preliminary hearing?

A. Right.

Q. At this hearing an attorney had been appointed to represent the defendant? Is that correct?

A. Yes.

Q. Do you know who that attorney is?

A. Colonel—I can't think of his last name. I know him.

Q. But you do know that when you appeared the second time before Judge Hodges that an attorney had been appointed?

A. Yes.

[fol. 309] Q. You know that the defendant was held in jail from April 13th, 1963, to about May 5, 1963, without an attorney being appointed, don't you?

A. Well, he made one statement that he didn't need a lawyer.

Q. You wouldn't have advised him that he didn't need a lawyer, would you?

A. No, I wouldn't have advised him that. It wasn't my job.

Q. Did you advise him that he did need a lawyer?
A. It's not my job to advise him. I just leave that up to the individual.

Redirect examination.

Q. (By the Solicitor General) As a matter of fact, you don't know whether he had a lawyer or not, do you?
A. I really do not, no, sir.
Q. Now, a while ago when you were talking about whether or not he had talked to a lawyer or talked to his kinfolks, you don't know whether he had or had not, do you?
A. I do not, no, sir.

The Solicitor General: You can come down.
The Defendant's Attorney: Just a minute.

Recross examination.

Q. (By the Defendant's Attorney) When you answered Mr. Hayes' question you didn't mean to change your testimony about what was your impression when you talked to Isaac's sister, did you?
A. I said that I didn't know whether she had been there or not.
Q. But it was your impression that she had not?
A. So far as knowing, I don't know. There's a lot of difference in knowing and having an impression.
Q. And you haven't changed that testimony, have you?
A. No.

(Witness excused)

[fol. 310] The Solicitor General: Your Honor, at this time I'd like to tender in evidence Exhibit 1 for the State of Georgia, and the other exhibits contained therein, being Exhibits 1-A, B, C, D, and E, identified and displayed by Dr. Jackson, as being true and correct representations of Nola Jean Roberts on the 14th day of April, 1963—to show her condition.

The Defendant's Attorney: The defendant objects, your Honor, on the ground that there is no evidence to show that the machine that was used to make the pictures was in proper working order. There's no evidence to show that a responsible person made those slides. We don't know

whether the slides were doctored or not. Dr. Jackson testified that they were made up in New York. We don't know by what process at all.

We also present to the Court the fact that in none of the pictures was the person identified by the picture itself, and identifications can only be had by testimony of Dr. Jackson.

The pictures are highly prejudicial. The only thing they could do, we submit to the Court, is color the evidence, and we move the Court to exclude these pictures from evidence.

The Solicitor General: Your Honor, in reply to that, those pictures were identified by Dr. Jackson. He said he took them. He said he didn't know what kind of capable or qualified or reputable person that was. I think Dr. Jackson is a highly reputable person. He said he took the pictures, and he swore they were true and correct representations.

Now, in a case of rape we allege that this was rape by force, and we are introducing those pictures for the purpose of showing some of the force that was used by the defendant, Isaac Sims, on Nola Jean Roberts at the time he raped her.

The Defendant's Attorney: Your Honor, we say that whatever the pictures show, we don't know who shot them [fol. 311] except by Dr. Jackson, and he appears to be an extremely hostile witness.

The Court: Well, they are admitted over objection.

(The slides referred to were thereupon received in evidence)

The Solicitor General: Your Honor, with that evidence the State rests.

The Defendant's Attorney: I understand that the State no closed. Is that right?

The Solicitor General: As I understand the procedure of the State of Georgia, the State of Georgia rests, and it is incumbent on the defendant to either rest or do whatever they want to do.

The Defendant's Attorney: That's what I wanted to be clear about, your Honor. The State hasn't closed.

The Solicitor General: The State has not closed. The State of Georgia has rested.

The Defendant's Attorney: (Addressing the defendant) Take the stand, please.

(The witness thereupon went to the witness stand)

The Defendant's Attorney: Your Honor, I have advised the defendant that under the law of Georgia he has the right to make a sworn statement, and in the event he makes a sworn statement he will be subject to cross examination by the State. I have advised him that he has a right to make an unsworn statement by the law of Georgia, and that in the event he makes an unsworn statement he cannot be cross examined by the State, but that his own counsel can help him to some extent.

I believe that is a fair representation of the law, your Honor.

Q. Will you state your name for the record, please?
A. Isaac Sims, Jr.
[fol. 312] Q. How old are you?
A. Twenty-nine.
Q. How far did you go in school?
A. Third grade.
Q. Pardon me?
A. Third grade.
Q. When did you leave the third grade?
A. When I was seventeen years old.
Q. Can you read or write, Isaac?
A. No, sir.
Q. Are your parents living or dead?
A. They dead.
Q. Do you remember being arrested on April 13th, 1963?
A. Yes, sir.
Q. Did you rape Miss Nola Jean Roberts?
A. No, sir. I don't know nothing about it.
Q. Did you beat Miss Nola Jean Roberts?
A. No, sir.
Q. Were you taken into custody over in Toledo?

(No response)

Q. Were you put in a car at Toledo?
A. Yes, sir.
Q. Were you brought over to Dr. Jackson's office?
A. Yes, sir.

Q. Will you tell the court and jury what happened when you were brought to Dr. Jackson's office?

A. Yes, sir.

Q. Will you tell the jury, please?

A. Well, they brought me over to Dr. Jackson's office and they carried me in there, about six or seven State Patrols, and Dr. Jackson beat me, and taken my clothes off, and then carried me over to the bigger hospital and stitched my eye [fol. 313] up where they kicked me over the eye, and put me on some white clothes—white pants, but I kept my shirt I had on.

Q. While you were in Dr. Jackson's office did he drag you around the floor?

A. Yes, sir.

Q. Will you tell the jury how he dragged you?

The Solicitor General: Now, your Honor, we object to counsel testifying for him. He's not just trying to aid him as little bit. He's just testifying.

The Defendant's Attorney: Your Honor, the defendant has such meager ability that we feel compelled to try to help him as much as we can, and I don't intend to lead him by any means.

The Court: Well, let the defendant make his own statement. You can prompt him and ask him questions, but don't just lead him.

Q. (By the Defendant's Attorney) What happened to you while you were in Dr. Jackson's office.

A. Well, he pulled me by my privates.

Q. What did you say?

A. Pulled me by my privates.

Q. Do you remember being over in the Ware County jail?

A. Yes, sir.

Q. Do you remember signing a statement?

A. If I did I didn't know what I was doing.

Q. You can come down.

A. There's one more thing I want to say, Judge.

The Court: Go ahead.

The Defendant: Whatever happened to this lady, I don't know anything about it. I'm really sorry of it.

The Defendant's Attorney: Do you want to come down now?

The Defendant: Yes, sir.
[fol. 314] The Defendant's Attorney: The defendant rests.
The Solicitor General: We close.
The Defendant's Attorney: The defendant closes.
The Court: All right.

(Evidence closed)

Acknowledgment of Service (omitted in printing)

JUDGE'S CERTIFICATE

I hereby approve and certify that the within and foregoing pages, numbered 122 through 245, constitute a true, correct, and complete transcript of the evidence proceedings as had before me in the above-captioned case commencing on October 7, 1964, and are approved as a part of the record herein.

This, the 15 day of January, 1965.

/s/ Ben Hodges Judge, Charlton Superior Court
Waycross, Judicial Circuit

[fol. 315] Filed in office this 15th day of January, 1965, at 2 P. M. Clyde Woolard, Clerk.

[fols. 316-317] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT NO. 1

CHARLTON COUNTY SUPERIOR COURT OCTOBER TERM, 1963

RAPE—Under Death Sentence

STATE OF GEORGIA,

v.

ISAAC SIMS, JR.

CONSIDERATION FOR COMMUTATION

It is the policy of this Board to make a thorough investigation into each case in which the prisoner is given a death sentence and to consider the same for commutation whether or not any application is made. No application having been made in this case, the Board proceeded to a consideration of it on its own motion. It has conducted a thorough investigation into the charge, the indictment and conviction of subject.

Now, in pursuance with the authority vested in the State Board of Pardons and Paroles of the State of Georgia, it is hereby

Considered, ordered and adjudged that commutation is denied.

It is directed that copies of this order be filed with the State Board of Corrections, the Clerk of Charlton County Superior Court and to the said Isaac Sims, Jr.

Given under the hand and seal of the State Board of Pardons and Paroles this the 6th day of November 1963.

State Board of Pardons and Paroles, [copy illegible], Chairman. J. W. Claxton, Member. [copy illegible], Member.

[fols. 318-319] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT NO. 2

STATE OF GEORGIA,
County of Charlton:

Whereupon, the jury having found the defendant, Isaac Sims Jr., guilty of the offense of Rape, without a recommendation of mercy, it is considered, sentenced and adjudged by the court that said defendant be carried from the bar of this court to the common jail of Charlton County, Georgia, and there held in safe-keeping until called for by a guard from the State Board of Penal Administration who shall carry him from said jail to the Penal Institution designated by said Board, and there held as provided by law until the 13th day of November, 1963, at which time he shall be electrocuted at said Penal Institution as provided by law.

Granted in open court, this 9th day of October, 1963.

Ben Hodges, Judge Superior Court, Charlton County, Georgia. Waycross Judicial Circuit.

[fols. 320-321] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 3

Solicitor General

Waycross Judicial Circuit of Georgia

Douglas, Georgia

April 16, 1964

Dewey Hayes
Solicitor General

Counties:
Bacon, Brantley, Charlton, Coffee, Pierce, Ware

Telephones:
Douglas Office 384-3863
Residence 384-2844
Waycross Office AT 3-4163

Mr. Howard Moore, Jr., Attorney
Hollowell, Ward, Moore & Alexander
859½ Hunter Street, N. W.
Atlanta, Georgia

Re: State of Georgia

vs.

Isaac Sims, Jr.

Dear Sir:

I am sending you my personal copy of the evidence in the above case. You may photostat or have a copy of the same made. There will be no charge or cost involved in this transaction.

Please make a copy and return my file within fifteen (15) days, if it is convenient.

Very sincerely, Dewey Hayes, Solicitor General.

DH:mjm

[File is being sent under separate cover.]

cc: Honorable W. H. Duckworth, Chief Justice, Supreme Court of Georgia, Judicial Building, Atlanta, Georgia.

[fol. 322] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 4

April 13, 1964

Mr. Dewey Hayes, Solicitor General
Charlton County Superior Court
Douglas, Georgia

Dear Mr. Hayes:

Please forward me a copy of the transcript of the trial proceedings in the case of *State of Georgia vs. Isaac Sims, Jr.*, tried in the Charlton County Superior Court, on or about October 9, 1963, which you exhibited in the Supreme Court of Georgia upon oral argument in the case of *Isaac Sims, Jr. vs. R. P. Balkcom, Jr.*, No. 22438, on Monday, April 13, 1964, and enclose your statement of costs.

With sincerest appreciation for your cooperation, I am

Very truly yours, s/ Howard Moore, Jr.

HM,Jr./1

cc: The Honorable W. H. Duckworth Chief Justice, Supreme Court of Georgia, Judicial Building, Atlanta, Georgia 30303. Albert Sidney Johnson, Esquire, Office of the Attorney General, Judicial Building, Atlanta, Georgia 30303.

[fol. 323] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 5

Names put in Grand Jury Box by Jury Revisors August 1, 1960.

1. J. C. Adams
2. Loyce Aldridge
3. E. F. Allen
4. W. R. Allen, Sr.
5. O. M. Altman
6. S. M. Altman, Jr.
7. Luke C. Andrews
8. Fred Askew, Jr.
9. Leon Askew
10. E. M. Batton, Jr.
11. George N. Birdsong
12. J. M. Brock
13. Roy E. Brogdon
14. Walter H. Bruschke
15. T. R. Butts
16. Cecil R. Carter
17. M. J. Chancey
18. Noah Lee Clark
19. W. F. Clark
20. J. T. Conner
21. Z. W. Conner
22. J. J. Conner
23. J. Earl Crews
24. Julian Crews
25. Frank H. Davis
26. B. H. Deloach
27. Theo Dinkins
28. Lee Dixon
29. James L. Eaton
30. M. A. Gay
31. Charles H. Gibson
32. C. E. Glenn
33. C. C. Gowen
34. S. H. Gowen
35. T. C. Gowen
36. J. S. Haddock, Jr.
37. W. C. Hall
38. W. C. Harden
39. L. A. Higginbotham
40. A. J. Hopkins, Jr.
41. Colquitt D. Hopkins
42. D. Ray James
43. A. R. Johnson
44. E. H. Johnson, Jr.
45. H. B. Johnson
46. Carl Lane
47. M. C. Leslie
48. R. E. Lott
49. J. L. McKendree
50. L. D. Majors
51. Richard P. Mays
52. William Mizell
53. O. C. Mizell
54. J. B. Moore
55. J. R. Nance
56. Rudolph Norwood
57. Verne J. Pickren
58. W. W. Pickren
59. Donald P. Prescott
60. E. O. Roberson
61. Frank Roddenberry
62. J. L. Rowell
63. J. W. Shuman
64. J. B. Southwell, Jr.
65. J. B. Southwell, Sr.
66. C. Pearce Stapleton
67. E. B. Stapleton, Jr.
68. E. B. Stapleton, Sr.

[fols. 324-325]

69. Ivan Steele
70. D. L. Stewart, Sr.
71. L. Jasper Stokes
~~72. N. G. Wade, III~~
73. Harold T. White
74. Kenneth Williams
75. Fred C. Woodall
76. Vernon Brock
77. Harry Chesser
78. Glenn Gibson
79. J. D. Hickox
80. J. C. Jones, Sr.
81. T. H. McLean, Sr.
82. R. C. Taylor
83. John A. Barker
84. Harold Crawford
85. Fell Crews
86. Leon Crews
87. Willie Dixon
88. Willie H. Hodges
89. Fed Privett
90. W. R. Simpson
91. Harold Thomas
92. Enoch Burnsed
93. Alton Crawford
94. Clyde Sands
95. Buford Thrift
96. Norman Chesser
97. James B. Coleman
98. Alton Dinkins
99. W. R. Dinkins
100. S. M. Howard
101. Robert N. Staton
102. George W. Crews
103. Wilbur Crews
104. Tom W. Harris
105. J. E. Johns
106. B. M. Prescott, Sr.
107. C. F. Adkins
108. J. J. Johns
109. J. T. O'Quinn
110. M. G. White
111. S. J. Davis, Jr.
112. Sammy Hendrix
113. R. L. Guy
114. M. E. Powell
115. J. M. Jackson
116. G. N. Bryant
117. M. D. Thrift
118. Arthur Carter
119. W. C. Hopkins
120. Thomas H. Crews
121. W. E. Stuckey
122. Jesse Gaskin

[fols. 326-327] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 6

1. J. C. Adams
2. Loyce Aldridge
3. F. F. Allen
4. W. R. Allen, Sr.
5. O. M. Altman
6. S. M. Altman, Jr.
7. Luke C. Andrews
8. Fred Askew, Jr.
9. Leon Askew
10. E. M. Batten, Jr.
11. George N. Birgsong
12. J. M. Brock
13. Roy E. Brogden
14. R. W. Bruschke
15. Walter H. Bruschke
16. T. R. Butts
17. Cecil R. Carter
18. M. J. Chancey
19. Noah Lee Clark
20. W. F. Clark
21. J. T. Conner
22. Z. W. Conner
23. J. J. Conner
24. J. Earl Crews
25. Julian Crews
26. Frank H. Davis
27. B. H. Deloach
28. Theo Dinkins
29. Lee Dixon
30. James L. Eaton
31. M. A. Gay
32. E. Clyde Gowen
33. Barney B. Gowen
34. Charles H. Gibson
35. C. F. Glenn
36. C. C. Gowen
37. S. H. Gowen
38. T. C. Gowen
39. J. S. Haddock, Jr.
40. W. C. Hall
41. W. C. Harden
42. L. A. Higginbotham
43. A. J. Hopkins, Jr.
44. Colquitt D. Hopkins
45. D. Ray James
46. A. R. Johnson
47. J. B. Hinson, Sr.
48. J. O. Hannaford, Jr.
49. John Harris
50. E. H. Johnson, Jr.
51. H. R. Johnson
52. Carl Lane
53. M. C. Leslie
54. R. E. Lott
55. J. L. McKendree
56. L. D. Majors
57. Richard P. Mays
58. William Mizell
59. O. C. Mizell
60. J. B. Moore
61. J. R. Nance
62. Rudolph Norwood
63. C. L. Passieu
64. C. J. Passieu
65. F. R. Pittman
66. Vern J. Pickren
67. W. W. Pickren
68. Donald P. Prescott
69. C. H. Quick
70. E. O. Roberson
71. Frank Roddenberry
72. J. L. Rowell
73. J. W. Shuman
74. J. B. Southwell, Jr.

75. J. B. Southwell, Sr.
76. C. Pearce Stapleton
77. E. B. Stapleton, Jr.
78. E. B. Stapleton, Sr.
79. Ivan Steele
80. D. L. Stewart, Sr.
81. Jasper Stokes

[fol. 328] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 7

1. J. C. Adams
2. C. F. Adkins
3. W. R. Allen, Sr.
4. Leon Askew
5. J. W. Askew
6. George Birdsong
~~7. George W. Brock~~
8. R. W. Bruschke
~~9. J. R. Calhoun~~
10. M. J. Chancey
11. J. P. Conner
12. J. T. Conner
13. J. J. Conner
14. Z. W. Conner
15. Hugh Crews
16. J. Earl Crews
17. Julian Crews
18. F. H. Davis
19. B. Hoyt DeLoach
20. D. R. Dinkins
21. Theo Dinkins
22. Lee Dixon
23. Ralph Duggan
24. Lawrence Flewell
~~25. Ed Flowers~~
26. Marion P. Gantt
27. M. A. Gay
28. Charles H. Gibson
29. C. E. Glenn
30. B. H. Gowen
31. E. C. Gowen
~~32. J. V. Gowen, Jr.~~
33. S. H. Gowen
34. T. C. Gowen, Sr.
35. R. L. Guy
36. W. C. Hall
~~37. Mrs. Mayme A. Harris~~
38. R. Ward Harrison
39. J. B. Hinson
~~40. Mrs. Roberta Hinson~~
41. Roy Hodges
42. A. J. Hopkins
43. Colquitt Hopkins
44. H. E. Huggins
45. J. M. Jackson
46. A. R. Johnson
~~47. B. S. Johnson~~
48. H. R. Johnson
~~49. J. A. Jones, Sr.~~
~~50. Mrs. Kathryn Jones~~
51. M. C. Leslie
52. J. L. McKendree
53. L. D. Majors
54. Richard P. Mays
55. Alton Mizell
56. William Mizell
57. O. C. Mizell
58. J. B. Moore
59. J. R. Nance
~~60. W. C. Odom~~
61. C. L. Passieu
~~62. J. B. Pearce, Sr.~~
63. V. J. Pickren
64. W. W. Pickren
65. F. R. Pittman
66. M. E. Powell
67. J. A. Prevatt
68. O. K. Prevatt
~~69. C. O. Raulerson~~
~~70. O. E. Rayner~~
~~71. Mrs. O. E. Rayner~~
72. E. O. Roberson
73. J. F. Roddenberry
74. C. D. Sims

75. J. B. Southwell, Sr.
76. C. P. Stapleton
77. E. B. Stapleton, Jr.
78. E. B. Stapleton, Sr.
79. D. L. Stewart, Sr.
~~80. Mrs. Noah Stokes~~
81. L. Jasper Stokes

[fols. 329-330]

~~82. P. O. Stokes~~
83. R. B. Stroup
~~84. F. V. Sweat~~
85. W. D. Thompson
86. John S. Tyson, Jr.
87. J. M. Wade
88. Neil G. Wade, III
89. D. R. Wainwright
90. Harold T. White
91. M. G. White
92. R. H. Wildes
93. Kenneth Williams
~~94. C. T. Brock~~
95. Vernon Brock
96. Harry Chesser
97. Glenn Gibson
98. Albert Gowen
99. Charlie E. Harden
00. O. F. Harden
101. Carl Jones
102. T. H. McLean, Sr.
~~103. E. Bell, Jr.~~
104. Harold Crawford
105. Fell Crews
106. Leon Crews
107. Willis A. Hodges
108. W. C. Hopkins
~~109. Fred F. Osterman~~
110. Fed Privett
~~111. Charles Raulerson~~
112. Noah Stokes
113. T. L. Roddenberry
114. R. C. Taylor
~~115. F. L. Burnsed~~
116. Alton Crawford
117. Clyde Sands
~~118. Alfred Thrift~~
119. Buford Thrift
120. Morgan Chesser
121. James B. Coleman
122. Basil Crews
123. Alton Dinkins
124. W. R. Dinkins
125. Barney B. Gowen
126. H. P. McDuffie
127. Theo Tucker
128. Kermit Crews
129. T. W. Harris
130. J. E. Johns
131. B. M. Prescott, Sr.

[fol. 331] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 8

1. J. C. Adams
2. Leon Askew
3. George W. Brock
4. R. W. Bruschke
5. J. J. Conner
6. Z. W. Conner
7. Hugh Crews
8. Julian Crews
9. F. H. Davis
10. D. R. Dinkins
11. Theo Dinkins
12. Lawrence R. Flewell
13. Charles H. Gibson
14. W. E. Gibson
15. B. H. Gowen
16. T. C. Gowen
17. Harold S. Gowen
18. R. L. Guy
19. John Harris
20. R. Ward Harrison
21. J. B. Hinson
22. Mrs. J. B. Hinson
23. Glenn Gibson
24. John A. Barker, Sr.
25. Ernie A. Bell, Jr.
26. Fell Crews
27. Leon Crews
28. Ernie Dixon
29. Willie Dixon
30. Willie H. Hodges
31. W. E. Renshaw
32. W. C. Suggs
33. Enoch J. Burnsed
34. F. L. Burnsed
35. Alton Crawford
36. Ottis Crews
37. Earl Davis
38. G. C. Knabb
39. Clyde Sands
40. A. L. Thrift
41. Alfred Thrift
42. Morgan Chesser
43. James B. Coleman
44. J. P. Conner
45. Basil Crews
46. Alton Dinkins
47. W. R. Dinkins
48. S. M. Howard
49. J. E. Johns
50. B. M. Prescott
51. A. J. Hopkins
52. Colquitt Hopkins
53. H. E. Huggins
54. J. M. Jackson
55. A. R. Johnson
56. B. S. Johnson
57. E. H. Johnson, Jr.
58. E. H. Johnson, Sr.
59. H. R. Johnson
60. M. C. Leslie
61. J. L. McKendree
62. L. D. Majors
63. R. P. Mays
64. Alton M. Mizell
65. William Mizell, Jr.
66. O. C. Mizell
67. Rudolph Norwood
68. C. J. Passieu
69. C. L. Passieu
70. V. J. Pickren
71. W. W. Pickren
72. F. R. Pittman
73. M. E. Powell
74. J. A. Prevatt

[fols. 332-333]

75. E. O. Roberson
76. J. F. Roddenberry
77. J. B. Southwell, Sr.
78. J. B. Southwell, Jr.
79. C. P. Stapleton
80. E. C. Stapleton, Sr.
81. L. J. Stokes
82. R. B. Stroup
83. F. V. Sweat
84. Malcolme Wade
85. M. G. White
86. Harold T. White
87. T. G. Brock
88. Vernon Brock
89. Harry Chesser, Jr.
90. A. G. Gowen

[fol. 334] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 9

1. J. C. Adams
2. C. F. Adkins
3. E. F. Allen
4. W. R. Allen, Jr.
5. James W. Altman
6. S. M. Altman, Jr.
7. Leon Askew
8. R. H. Bragg
9. G. W. Brock
10. R. W. Bruschke
11. H. D. Chastain
12. George M. Coleman
13. Z. W. Conner
14. Hugh Crews
15. J. Elbert Crews
16. J. Marshal Crews
17. Julian Crews
18. Frank Davis
19. B. H. DeLoach
20. D. R. Dinkins
21. Lee Dixon
22. Ralph Duggan
23. James L. Eaton
24. Lawrence Flewell
25. M. P. Gantt
26. Charles H. Gibson
27. C. E. Glenn
28. B. H. Gowen
29. T. C. Gowen
30. E. C. Gowen
31. J. V. Gowen, Jr.
32. S. Harold Gowen
33. Lonnie Guinn
34. R. L. Guy
35. L. A. Higginbotham
36. J. B. Hinson
37. Roy Hodges
38. A. J. Hopkins, Jr.
39. H. E. Huggins
40. J. M. Jackson
41. A. R. Johnson
42. B. S. Johnson
43. H. R. Johnson
44. E. H. Johnson
45. Roswald Johnson
46. J. Ardell Jones
47. Troy Jones
48. M. C. Leslie
49. E. R. Lott
50. L. D. Majors
51. Richard P. Mays
52. Alton M. Mizell
53. John D. McCoy
54. J. L. McKendree
55. Rudolph Norwood
56. W. C. Odom
57. C. L. Passieu
58. J. B. Pearce, Sr.
59. M. E. Powell
60. Donald Prescott
61. Mersal Prescott
62. W. H. Prescott
63. J. A. Prevatt
64. C. O. Raulerson
65. J. F. Roddenberry
66. Ben Rodgers
67. C. D. Simms
68. Benny Smith
69. J. B. Southwell, Jr.
70. J. B. Southwell, Sr.
71. E. B. Stapleton, Jr.
72. E. B. Stapleton, Sr.
73. C. P. Stapleton
74. D. L. Stewart, Sr.

75. Jasper Stokes
76. P. O. Stokes

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77. R. B. Stroup
78. M. D. Thrift
79. John S. Tyson, Jr.
80. J. M. Wade
81. L. I. Wade
82. Neill G. Wade, III
83. D. R. Wainwright
84. M. G. White
85. Harold T. White
86. Tom Brock
87. Vernon Brock
88. Willie Dixon
89. Brantley Gay
90. S. G. Gibson
91. Glenn Gibson
92. Lewis Harden
93. O. F. Harden
94. Charlie E. Harden
95. Julian Huggins
96. Carl Jones
97. T. L. Roddenberry
98. R. C. Taylor
99. Harold Crawford
100. Fell Crews
101. Charlie Hodges
102. Willie H. Hodges
103. Wm. A. Norman
104. Fred F. Osterman
105. Rudy R. Raulerson
106. Noah Stokes
107. Benton Thompson
108. R. L. Canaday
109. Geo. W. Chism
110. Douglas Raulerson
111. Clyde Sands
112. A. L. Thrift
113. Buford Thrift
114. Arthur Carter
115. Morgan Chesser 1
116. James P. Coleman 3
117. J. P. Conner
118. Basil Crews 1
119. Buster Crews 1
120. Oscar L. Crews 3
121. W. R. Dinkins 1
122. S. M. Howard
123. H. P. McDuffie 1
124. J. A. Stanfield
125. Robert N. Staton
126. Jimmy Todd 1
127. Sammy Hendrix
128. J. E. Johns
129. B. M. Prescott
130. William M. Prescott

[fol. 337] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 10

The following names were placed in the Grand Jury box.

1. J. C. Adams
2. C. F. Adkins
3. F. F. Allen
4. Estes E. Altman
5. Fred Askew, Jr.
6. Leon Askew
7. Luke C. Andrews
8. George N. Birdsong
9. R. H. Bragg, Sr.
10. Roy F. Brogden
11. J. M. Brock
12. R. W. Bruschke
13. W. F. Clark
14. J. J. Conner
15. J. T. Conner
16. J. P. Conner
17. Z. W. Conner
18. Robert L. Corley
19. Hugh Crews
20. J. M. Crews
21. J. Earl Crews
22. Julian Crews
23. Oscar E. Crews
24. Alvin Davis
25. Frank H. Davis
26. B. Hoyt DeLoach
27. Theo Dinkins
28. Lee Dixon
29. Ralph J. Duggan, Sr.
30. B. E. Duke
31. T. W. Edge
32. J. N. Elder
33. Doc Evans
34. Charles H. Gibson
35. B. H. Gowen
36. E. Clyde Gowen
37. S. H. Gowen
38. T. C. Gowen
39. Harold Guinn
40. R. L. Guy
41. J. S. Haddock
42. W. C. Hall
43. Robert F. Hill
44. Colquitt D. Hopkins
45. Ernest V. Horne
46. H. E. Huggins
47. Joseph M. Jackson
48. D. Ray James
49. A. R. Johnson
50. E. H. Johnson, Jr.
51. H. R. Johnson
52. J. C. Jones, Jr.
53. Virgil Kelly
54. Carl Lane
55. Ben H. Lee
56. E. R. Lott
57. Richard P. Mays
58. Alton M. Mizell
59. Wm. Mizell, Jr.
60. J. B. Moore
61. J. R. Nance
62. Rudolph Norwood
63. W. C. Odom
64. C. W. Parnell
65. C. J. Passieu
66. W. W. Pickren
67. F. R. Pittman, Sr.
68. O. K. Prevatt
69. H. K. Ridgon
70. W. W. Roberts

71. J. Frank Roddenberry
72. Ira L. Rogers, Sr.
73. B. L. Shivar
74. John H. Shuman
75. J. W. Shuman
76. Mahlon Smith
77. J. B. Southwell, Sr.
78. E. R. Stapleton, Jr.
79. E. B. Stapleton, Sr.
80. C. P. Stapleton
81. Ican Steele
82. D. L. Stewart, Sr.
83. L. Jasper Stokes
84. P. O. Stokes
85. Dr. J. S. Taylor
86. W. L. Thomas, Sr.
87. W. D. Thompson
88. John S. Tyson, Jr.
89. G. W. White
90. Harold T. White
91. M. G. White
92. Kenneth Williams
93. Fred C. Woodall
94. Vernon Brock
95. G. N. Bryant
96. Harry Chesser
97. Glen Gibson
98. A. G. Gowen
99. Albert Gowen
100. J. C. Jones, Sr.
101. Clarence O'Quinn
102. Tommy Roddenberry
103. R. C. Taylor
104. W. D. Bell
105. George E. Bell
106. Lacy Conner
107. L. F. Crawford
108. Harold Crawford
109. Fell Crews
110. Leon Crews
111. Willie Dixon
112. R. B. Griner
113. Edward Hickox
114. Grover Hodges
115. Willie H. Hodges
116. Fed Privett
117. Noah Stokes
118. F. L. Burnsed
119. R. L. Canady
120. George W. Chism
121. Alton Crawford
122. Earl Davis
123. Clyde Sands
124. Aaron Thrift
125. Buford Thrift
126. Alton Dinkins
127. W. R. Dinkins
128. Barney B. Gowen
129. N. A. Griffin
130. H. P. McDuffie
131. Robert N. Staton
132. James C. Todd
133. Jimmy Todd
134. Wilbur Crews
135. Tom W. Harris
136. J. E. Johns
137. J. J. Johns
138. B. M. Prescott, Sr.
139. M. D. Thrift
140. L. C. Black
141. Arthur Carter
142. J. Elvin Carter
143. Matthew Carter
144. Morgan Chesser
145. James B. Coleman
146. A. D. Crews
147. Kenneth M. Crews
148. Herbert Crews
149. Leonard Crews
150. Lewis Crews
151. Riley Crews

[fol. 338] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing page is a true and correct copy of the Grand Jury list as it was revised by the jury commissioners on September 26, 1962 and appears of record in this the office of the Clerk of Superior Court, Charlton County, Georgia in Minute Book "H", page 173.

Witness my hand and the official seal of this court this the 14th day of December, 1963.

Clyde Woolard, Clerk of Superior Court, Charlton County, Folkston, Georgia.

[fol. 339] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 11

1. J. C. Adams 1
2. C. F. Adkins 2
3. Loyce Adridge
4. E. F. Allen
5. Homer Allen
6. W. R. Allen, Sr. 3
7. W. R. Allen, Jr.
8. James Altman
9. S. M. Altman, Jr.
10. Luke C. Andrews
11. Gene Paul Askew
12. Fred Askew, Jr.
13. Leon Askew 4
14. J. W. Askew 1
15. J. H. Barfield
16. E. M. Batton, Jr.
17. George Birdsong 5
18. R. H. Bragg
19. J. M. Brock
20. George W. Brock 6
21. Roy Brogdon
22. R. W. Bruschke 7
23. Walter Bruschke
24. Bailey Bryant
25. Pasco Bryant
26. Robert T. Bryant
27. T. R. Butts
28. J. R. Calhoun 8
29. Cecil R. Carter
30. Clarence Carter
31. M. J. Chancey 9
32. Norman Chesser
33. W. F. Clark
34. George M. Coleman
35. J. P. Conner 10
36. J. T. Conner 11
37. J. J. Conner 120
38. Z. W. Conner 119
39. Robert L. Corley
40. Hugh Crews 12
41. Ivey B. Crews (Buck)
42. J. Earl Crews 13
43. J. Elbert Crews
44. Julian Crews 14
45. Julian L. Crews
46. M. J. Crews
47. Nathan Crews
48. Walter B. Crews
49. F. H. Davis (Frank) 15
50. S. J. Davis, Jr.
51. B. Hoyt DeLoach 119
52. D. R. Dinking 118
53. Dan R. Dinkins, Jr.
54. Dell Dinkins
55. Theo Dinkins 16
56. Lee Dixon 17
57. Ralph Duggan 18
58. James L. Eaton
59. J. N. Elders
60. L. C. Elkins

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61. J. L. Eunice, Sr.
62. Lawrence R. Flewell 19
63. Ed Flowers 20
64. Marion P. Gantt 21
65. M. A. Gay 22
66. Charles H. Gibson 23
67. Ray Gibson
68. W. E. Gibson
69. A. L. Gillis
70. C. E. Glenn 24
71. B. H. Gowen 112

72. Clifton C. Gowen
73. E. C. Gowen 25
74. Ferris D. Gowen
75. G. R. Gowen, III
76. J. V. Gowen, Jr. 111
77. S. H. Gowen 26
78. T. C. Gowen, Jr.
79. T. C. Gowen, Sr. 27
80. R. W. Gowen
81. Harold Lee Guinn
82. R. L. Guy 28
83. J. S. Haddock, Jr.
84. W. C. Hall 113
85. J. O. Hannaford, Jr.
86. W. C. Harden
87. Mrs. Mayme A. Harris 32
88. R. Ward Harrison 29
89. L. A. Higginbotham
90. J. B. Hinson 30
91. Mrs. Roberta Hinan 31
92. Roy Hodges 114
93. A. J. Hopkins 32
94. Colquitt Hopkins 115
95. H. E. Huggins 116
96. Juanita A. Higgins
97. Herbert Huling
98. J. M. Jackson 33
99. D. Ray James
100. A. R. Johnson 24
101. B. S. Johnson 35
102. E. H. Johnson, Jr.
103. H. R. Johnson 36
104. R. K. Johnson
105. J. A. Jones, Sr. 37
106. J. A. Jones, Sr.
107. J. C. Jones, Jr.
108.
109.
108. Mr. Kathryn Jones 38
109. Virgil Kelley
110. Horace Knight
111. Carl Lane
112. Vernon Lee
113. M. C. Leslie 39
114. Demery Lloyd
115. E. R. Lott
116. Robert McCoy
117. John D. McCoy
118. J. L. McKendree 40
119. Mrs. J. L. McKendree
120. L. D. Majors 117

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121. Jack R. Mays
122. Richard P. Mays 41
123. Mrs. Charles R. Miller
124. Alton Mizell 42
125. Harold Mizell
126. William Mizell
127. Mr. Iva D. Mizell
128. O. C. Mizell
129. Truitt Mizell
130. J. B. Moore 45
131. Colonel Morgan
132. Francis Murray
133. J. C. Murray
134. J. R. Nance 46
135. John E. Norris
136. Rudolph Norwood
137. J. F. O'Berry
138. Roy O'Berry
139. W. C. Odom 5
140. C. L. Passieu 47
141. C. J. Passieu
142. J. B. Pearce, Sr. 48
143. Oscar Petty
144. V. J. Pickren 49
145. S. L. Pickren
146. W. W. Pickren 50
147. F. R. Pittman 51
148. John W. Poulson
149. M. E. Powell 52

150. Donald Prescott
151. J. A. Prevatt 53
152. O. K. Prevatt 54
153. C. O. Raulerson 55
154. O. E. Raynor 56
155. Mrs. O. E. Raynor 57
156. H. K. Rigdon
157. W. W. Roberts
158. E. O. Roberson 58
159. Fred M. Roberson
160. J. Frank Roddenberry 59
161. Ira Rogers, Sr.
162. J. L. Rowell
163. B. L. Shivar
164. John H. Shuman
165. J. W. Shuman
166. C. D. Sims 60
167. Bennie Smith
168. Mahlon Smith
169. J. B. Southwell, Jr.
170. J. B. Southwell, Sr. 61
171. Avery C. Spell
172. C. Pearce Stapleton 62
173. E. B. Stapleton, Jr. 63
174. E. B. Stapleton, Sr. 64
175. Ivan Steele
176. D. L. Stewart, Sr. 65
177. Mrs. Noah Stokes 68
178. L. Jasper Stokes 66
179. P. O. Stokes
180. R. B. Stroup 67

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181. F. V. Sweat (Speck) 69
182. Dr. J. S. Taylor
183. W. D. Thompson 70
184. Cleo H. Turner
185. John S. Tyson, Jr. 71
186. Jack Wade
187. J. M. Wade 72
188. Lewis I. Wade
189. Neil G. Wade, III 73
190. Virginia S. Wade
191. D. R. Wainwright 74
192. Kenneth Wainwright
193. G. W. White
194. Harold T. White 75
195. M. G. White 96
197. R. H. Wildes 77
197. Larry Williamson
198. Kenneth Williams 2
199. H. G. Willingham
200. A. E. Willingham
201. C. L. Zipperer
200. G. T. Brock 78
201. Vernon Brock 79
202. James I. Bryant
203. Harry Chesser 3
204. G. N. Bryant
205. Willie M. Chesser
206. Willie Dixon
207. Earnie Dixon —
208. Roland Dixon
209. Albert F. Gay
210. J. B. Gay —
211. Glenn Gibson 80
212. A. G. Gowen
213. B. G. Gibson
214. Albert Gowen 81
215. Charlie E. Harden 4
216. Lewis Harden
217. O. F. Harden 82
218. J. D. Hickox (Hickox)
219. Carl Jones 83
220. T. H. McLean, Sr. 110
221. John A. Barker
222. E. Bell, Jr. 6
223. Lacy Conner
224. Harold Crawford 84
225. Champ Crews
226. Clarence H. Crews
227. Fell Crews
228. Henry Crews

229. Leon Crews
230. John T. Fox
231. Edward Hickox
232. C. L. Hodges
233. Willis A. Hodges 86
234. Willie H. Hodges
235. W. H. Hopkins 87
236. Oscar H. Leckie

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237. Fred F. Osterman 90
238. Yulle Privett
239. Fed Privett 91
240. Charles Raulerson 92
241. Rudy R. Raulerson
242. W. E. Renshaw
243. Mrs. W. R. Simpson
244. Noah Stokes 93
245. W. C. Suggs
246. W. R. Sutton
247. Harold Thomas
~~248. Bruce L. Thomas~~
248. F. L. Murray
249. T. H. McLean
250. Clarence O'Quinn
251. Royal Petty
252. N. W. Roddenberry
253. T. L. Roddenberry 94
254. Roy A. Taylor
255. R. C. Taylor
256. Francis Turner
257. Enoch Burnsed
258. F. L. Burnsed 96
259. George W. Chism
260. John D. Crawford
261. Alton Crawford 97
262. Wallace Hodges
263. Cecil Raulerson
Farley Burnsed Jr.
264. Clyde Sands 98
265. Alfred Thrift 99
266. A. L. Thrift
267. Buford Thrift 100
268. L. C. Black
269. Victor Brooks
270. Alton Carter
271. Arthur Carter
272. Morgan Chesser 101
273. James B. Coleman 102
274. Basil Crews 103
275. Alton Dinkins 104
276. W. R. Dinkins 105
277. Mrs. B. B. Gowen
278. Barney B. Gowen 106
279. N. A. Griffin
280. Jesse M. Hilton
281. S. M. Howard
282. H. P. McDuffie 118
283. Robert M. Staton
284. Jimmie Todd
285. Theo Tucker 107
286. Kermit Crews 108
287. Jesse A. Crews
288. George W. Crews
289. Hershel Crews
290. Wilbur Crews
291. T. W. Harris 109

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292. Sammy Hendrix
293. J. E. Johns 88
294. B. M. Prescott, Jr.
295. B. M. Prescott, Sr. 89
296. Lee R. Prescott
297. J. D. O'Quinn
298. Lawrence Allen
299. Hiram Altman
300. Leon Bailey
301. James Lamar Casey
302. Robert A. Chesser, Jr.
303. Mose Crews, Jr.
304. Alvin Davis
305. Eugene Davis
306. Lewis M. Davis

307. Dock Evans
308. Lonnie Guinn
309. B. H. Lee
310. Peter McNeil
311. O. L. Nobles
312. Scott Petty
313. Eaton Prescott
314. Mersal Prescott
315. James Riggins
316. J. V. Shipes
317. W. R. Steedley
318. W. E. Stuckey
319. A. L. Taylor
320. W. L. Thomas, Sr.
321. Dayton Woodard
322. Raiford Woolard
Wallace Hodge
Farley Burnsed, Jr.

[fol. 346] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 12

1. J. C. Adams
2. L. C. Addridge
3. C. F. Adkins
4. E. F. Allen
5. W. R. Allen, Jr.
6. Hiram Altman
7. James Altman
8. S. M. Altman, Sr.
9. S. M. Altman, Jr.
10. Luke Andrews
11. Gene Paul Askew
12. Fred Askew, Jr.
13. Leon Askew
14. James Eaton
15. Ralph Belcher
16. George Birdsong
17. R. H. Bragg
18. J. H. Brock
19. George W. Brock
20. Walter Bruechke
21. R. W. Bruechke
22. Bailey Bryant
23. F. R. Capps
24. Carter Clarence
25. L. C. Carnathan
26. Cecil R. Carter
27. M. J. Chancey
28. Harry Chesser, Jr.
29. W. F. Clark
30. J. J. Conner
31. Z. W. Conner
32. Robert L. Cooley
33. Erving Crews
34. Hugh Crews
35. Earl J. Crews
36. Elbert Crews
37. Julian Crews
38. Mose Crews
39. J. Melton Crews
40. M. J. Crews
41. Nathan Crews
42. Thomas H. Crews
43. Eugene Davis
44. F. H. Davis
45. D. R. Dinkins
46. Theo Dinkins
47. Lee Dixon
48. Ralph Duggan
49. T. W. Edge
50. Dock Evans
51. J. N. Elder
52. Lawrence R. Flewell
53. E. D. Flowers
54. Jim Gantt
55. Marion P. Gantt
56. Albert F. Gay
57. M. A. Gay
58. Charles H. Gibson
59. [Copy Illegible]
60. Carl E. Glenn
61. B. H. Gowen
62. C. C. Gowen
63. T. C. Gowen
64. Harold S. Gowen
65. Harold Guinn
66. Lonnie Guinn
67. R. L. Guy
68. J. S. Haddock, Jr.
69. J. O. Hannaford, Jr.
70. W. C. Harden
71. John Harris
72. R. Ward Harrison
73. Dennis L. Higginbotham
74. L. A. Higginbotham

75. J. B. Hinson
76. Mrs. J. B. Hinson
77. Roy Hodge
78. Joseph T. Holt

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79. A. J. Hopkins
80. Colquitt Hopkins
81. H. E. Huggins
82. J. M. Jackson
83. A. R. Johnson
84. B. S. Johnson
85. E. H. Johnson, Jr.
86. E. H. Johnson, Sr.
87. H. R. Johnson
88. R. K. Johnson
89. J. A. Jones
90. Robert C. Lanigan
91. M. C. Leslie
92. Demery Lloyd
93. E. R. Lott
94. John D. McCoy
95. J. L. McKendree
96. L. D. Majors
97. J. R. Mays
98. R. P. Mays
99. Alton M. Mizell
100. Harold Mizell
101. Wm. Mizell, Jr.
102. O. C. Mizell
103. Colonel Morgan
104. Rudolph Norwood
105. Johnny Norris
106. C. J. Passieu
107. C. L. Passieu
108. J. B. Pearce, Sr.
109. V. J. Pickren
110. Samuel L. Pickren
111. W. W. Pickren
112. F. R. Pittman
113. M. E. Powell
114. Donald Prescott
115. Mersal Prescott
116. W. H. Prescott
117. J. A. Prevatt
118. O. E. Raynor
119. H. K. Rigdon
120. W. W. Roberts
121. E. O. Roberson
122. J. F. Roddenberry
123. Ben Rodgers
124. J. W. Shuman
125. C. D. Sims
126. Mahlon Smith
127. J. B. Southwell, Sr.
128. J. B. Southwell, Jr.
129. C. P. Stapleton
130. E. B. Stapleton, Jr.
131. E. B. Stapleton, Sr.
132. D. L. Stewart
133. L. E. Stokes
134. L. J. Stokes
135. R. B. Stroup
136. F. V. Sweat
137. Lewis Wade
138. Neil Wade
139. Malcolme Wade
140. Jack Wade
141. D. R. Wainwright
142. M. G. White
143. Harold T. White
144. G. W. White
145. Arliss E. Willingham
146. E. M. Wright
147. C. L. Zipperer
148. Miss Annette Brock
149. T. G. Brock
150. Vernon Brock
151. Harry Chosser, Sr.
152. Roland Dixon
153. J. B. Gay
154. A. G. Gowen

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155. Glenn Gibson
156. S. G. Gibson
157. Charles E. Harden
158. O. F. Harden
159. J. D. Hickox
160. Julian Huggins
161. Carol Jones
(Carl Jones)
162. T. H. McLean
163. T. L. Roddenberry
164. R. C. Taylor
165. John A. Barker, Sr.
166. R. F. Beard
167. Ernie A. Bell, Jr.
168. David Burdett
169. Doyle Canaday, Mrs.
170. Earl Crawford
171. Thelma Crawford
172. Champ Crews
173. Fell Crews
174. Leon Crews
175. Ernie Dixon
176. Willie Dixon
177. W. A. Hodges
178. Willie H. Hodges
179. W. C. Hopkins
180. Oscar Leckie
181. Fed Privitt
182. W. E. Renshaw
183. Noah Stokes
184. W. C. Suggs
185. Venton Thompson
186. Enoch J. Burnsed
187. F. L. Burnsed
188. R. L. Canaday
189. Alton Crawford
190. John D. Crawford
191. Oliver D. Crews
192. Ottis Crews
193. L. L. Crews
193. Fred F. Osterman
194. Earl Davis
195. Raiford Gainey
196. Edward W. Hodges
197. G. C. Knabb
198. N. J. Raulerson
199. Clyde Sands
200. A. L. Thrift
201. Alfred Thrift
202. Buford Thrift
203. Morgan Chesser
204. James B. Coleman
205. J. P. Conner
206. Basil Crews
207. Hilton Crews
208. Alton Dinkins
209. W. R. Dinkins
210. Barney B. Gowen
211. Ferris Gowen
212. J. O. Howard
213. S. M. Howard
214. H. P. McDuffie
215. Robert N. Staton
216. Theo Tucker
217. Wilbur Crews
218. Sammy Hendricks
219. J. E. Johns
220. B. M. Prescott
221. Eston Prescott
222. Lee Prescott
223. Ivory Alberti
224. Charlie Bailey
225. Henry Leo. Bailey
226. Ed Brown
227. Herman Everett
228. Sam Hannan
229. T. L. Jones

[fol. 350] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 13

List of Traverse Jurors drawn by Jury Commissioners, Aug. 9, 1954

1. J. C. Adams
2. C. F. Adkins
3. E. C. Aldridge
4. Doyce Aldridge
5. Mrs. E. F. Allen
6. E. F. Allen
7. W. R. Allen, Jr.
8. Hiram Altman
9. James W. Altman
10. O. M. Altman
11. S. M. Altman, Sr.
12. S. M. Altman, Jr.
13. Luke C. Andrews
14. Leon Askew
15. Fred Askew, Jr.
16. E. M. Batton
17. E. M. Batton, Jr.
18. Ralph Belcher
19. George Birdsong
20. L. C. Black
21. R. A. Boyd
22. John W. Burch
23. Albert Brantley
24. B. H. Bragg
25. G. W. Brock
26. Mrs. J. H. Brown
27. R. W. Bruschke
28. Richard Bruschke
29. Bailey Bryant
30. J. W. Bryant
31. Pasco Bryant
32. B. E. Canaday
33. Bud Cantrell
34. Cecil B. Carter
35. Clarence Carter
36. M. J. Chancey
37. H. D. Chastain
38. Harry Chesser, Jr.
39. Noah Lee Clark
40. W. F. Clark
41. George M. Coleman
42. J. J. Conner
43. Z. W. Conner
44. E. L. Craft
45. Erving Crews
46. Hugh Crews
47. Ira Crews
48. Ivey B. Crews
49. Earl J. Crews
50. J. Elbert Crews
51. J. Marshal Crews
52. Jimmy H. Crews
53. Julian Crews
54. J. Melton Crews
55. J. M. Crews
56. Mose Crews, Jr.
57. Nathan A. Crews
58. Thomas H. Crews
59. W. R. Crews
60. Frank Davis
61. S. J. Davis, Sr.
62. S. J. Davis, Jr.
63. B. H. DeLoach
64. D. R. Dinkins
65. E. L. Dinkins
66. Lee Dixon
67. Roland Dixon
68. John R. Dominey, Jr.

69. B. E. Duke
70. Ralph Duggan
71. James L. Eaton
72. O. E. Edenfield
73. T. W. Edge
74. J. N. Elder
75. L. C. Elkins
76. J. L. Eunice
77. Dock Evans
78. Lawrence Flewell
79. J. A. Gantt
80. M. P. Gantt
81. M. A. Gay
82. Charles H. Gibson
83. W. E. Gibson
84. C. E. Glenn
85. Clifton Gowen
86. B. H. Gowen
87. T. C. Gowen
88. E. C. Gowen
89. J. V. Gowen, Jr.
90. S. Harold Gowen
91. Harold Lee Guinn
92. Lonnie Guinn
93. Mamie T. Guy
94. R. L. Guy
95. Mrs. W. G. Guthrie
96. J. S. Haddock
97. J. O. Hannaford, Jr.
98. W. C. Harden
99. W. H. Harden
100. John Harris
101. Mrs. Gazelle Harrison
102. E. J. Herrin
103. L. A. Higginbotham
104. Miss Dora Nell Higginbotham
105. Mrs. Roberta Hinson
106. J. B. Hinson
107. Roy Hodges
108. A. J. Hopkins, Jr.
109. Colquitt Hopkins
110. J. O. Howard
111. H. E. Huggins
112. Herbert Huling
113. J. M. Jackson
114. A. R. Johnson
115. B. S. Johnson
116. Gertrude W. Johnson
117. H. R. Johnson
118. E. H. Johnson
119. Roswald Johnson
120. J. Ardell Jones
121. Troy Jones
122. S. F. Kennison
123. Thomas Knowles
124. E. R. Kurfees
125. Carl Lane
126. B. H. Lee
127. C. S. Lentz
128. M. C. Leslie
129. Demery Lloyd
130. E. R. Lott
131. L. D. Majors
132. Jack R. Mays
133. Richard P. Mays
134. Alton M. Mizell
135. Harold Mizell
136. Wm. Mizell
137. O. C. Mizell
138. O. C. Mizell
139. J. B. Moore
140. Colonel Morgan
141. J. C. Murray
142. E. E. McClung
143. W. R. McCoy
144. John D. McCoy
145. J. L. McKendree
146. Miss Edwina Nelms
147. Rudolph Norwood
148. J. F. O'Berry
149. Roy O'Berry
150. W. C. Odom
151. Mrs. Rosa Lee Pacetty

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152. C. J. Passieu
153. C. L. Passieu
154. J. B. Pearce, Sr.
155. Oscar Petty
156. Scott Petty
157. V. J. Pickren
158. N. W. Pickren
159. F. R. Pittman
160. Mrs. R. E. Player
161. M. E. Powell
162. Donald Prescott
163. Ellis Prescott
164. Hampton M. Prescott
165. Hershel Prescott
166. W. H. Prescott
167. W. H. Prescott
168. J. A. Prevatt
169. O. K. Prevatt
170. W. F. Price
171. C. O. Raulerson
172. O. E. Raynor
173. Mrs. O. E. Raynor
174. W. W. Roberts
175. Fred M. Robinson
177. E. O. Robinson
178. J. F. Roddenberry
179. Ben Rodgers
180. G. H. Sheppard
181. B. L. Shivar
182. John H. Shuman
183. J. W. Shuman
184. D. E. Sikes
185. Floyd A. Sikes
186. C. D. Simms
187. Benny Smith
188. Mahlon Smith
189. Virgil Smith
190. J. B. Southwell, Jr.
191. J. B. Southwell, Sr.
192. E. B. Stapleton, Sr.
193. C. P. Stapleton
194. E. B. Stapleton, Jr.
195. Ivan Steele
196. D. L. Stewart, Sr.
197. L. E. Stokes
198. Jasper Stokes
199. P. O. Stokes
200. C. L. Stonecypher
201. R. B. Stroup
202. F. V. Sweat
203. A. L. Taylor
204. J. S. Taylor
205. Roy M. Thomas, Sr.
206. W. L. Thomas, Sr.
207. M. D. Thrift
208. I. B. Tomlinson
209. John S. Tyson, Jr.
210. J. M. Wade
211. L. I. Wade
210. Neill G. Wade III
211. D. R. Wainwright
212. M. G. White
213. Harold T. White
214. Mrs. Katherine Wildes
215. R. H. Wildes, Sr.
216. Dayton Woolard
217. H. W. Wollard
218. Rayford Woolard
219. W. L. Woolard
220. E. H. Wright
221. Raymond Altman
222. Tom Brock
223. Vernon Brock
224. Harry Chesser, Sr.

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226. Willie Dixon
227. Brantley Gay
228. A. G. Gowen
229. S. G. Gibson
230. Glenn Gibson
231. Lewis Harden

232. O. F. Harden
233. Charlie E. Harden
234. Julian Huggins
235. Carl Jones
236. T. H. McLean
237. Clarence O'Quinn
238. Malcolm C. Roddenberry
239. Newton Roddenberry
240. T. L. Roddenberry
241. Mrs. Eva Stokes
242. R. C. Taylor
243. Roy A. Taylor
244. J. E. Turner
245. John A. Barker
246. R. F. Beard
247. W. H. Cohen
248. F. G. Conner
249. Mrs. Dorothy Cranford
250. Harold Crawford
251. Lawrence Crawford
252. Mrs. Velma M. Crawford
253. Champ Crews
254. Fell Crews
255. Hardy L. Crews
256. Henry Crews
257. Leon Crews
258. B. G. Griner
259. Edward Hickox
260. Charlie Hodges
261. Willie H. Hodges
262. W. C. Hopkins
263. Donald Nettles
264. Wm. A. Norman
265. Fred F. Osterman
266. Fred Privett
267. Charles Raulerson
268. Rudy R. Raulerson
269. W. E. Renshaw
270. W. R. Simpson
271. Noah Stokes
272. S. C. Stokes
273. Benton Thompson
274. Farley L. Burnsed
275. R. L. Canaday
276. Geo. W. Chism
277. Alton Crawford
279. Earl Davis
280. Rayford Gainey
281. Wallace Hodges
282. G. C. Knabb
283. Douglas Raulerson
284. Clyde Sands
285. A. L. Thrift
286. Alfred Thrift
287. Buford Thrift
288. Arthur Carter
289. Morgan Chesser
290. James P. Coleman
291. J. P. Conner
292. A. D. Crews
293. Hilton Crews
294. Basil Crews
295. Buster Crews
296. Oscar L. Crews
297. O. B. Davis
298. W. B. Dinkins
299. Alton Dinkins
300. Mrs. B. B. Gowen
301. Barney Gowen
302. Mrs. N. A. Griffin
303. Paul Hickox
304. S. M. Howard
305. Hilton Keene
306. H. P. McDuffie
307. S. C. Padgett
308. J. A. Stanfield
309. Robert N. Staton
310. Jimmy Todd
311. Theodore Tucker
312. H. H. Barber
313. Wilbur Crews
314. Sammy Hendrix

415. George W. Johns
316. J. E. Johns
317. J. J. Johns
318. George R. Lee
319. T. J. O'Quinn
320. B. M. Prescott
321. William M. Prescott

1C. Timothy Haygood
2C. James Mack
3C. R. H. Littles
4C. Herman Everett
5C. Odis Ledbetter
6C. Joe Walker
7C. Sam Hannans

[fol. 354] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 14

Names Put in Traverse Jury Box August 1, 1960 by Jury Revisors

1. J. C. Adams 1
2. Loyce Aldridge 2
3. E. F. Allen 3
4. Lawrence Allen
5. W. R. Allen, Sr. 4
6. Hiram Altman
7. James W. Altman
8. O. M. Altman 5
9. S. M. Altman, Jr. 119
10. B. A. Anderson
11. Luke C. Andrews 6
12. Fred Askew, Jr. 7
13. J. W. Askew
14. Leon Askew 8
15. E. M. Batton, Jr. 120
16. George N. Birdsong 9
17. R. H. Bragg
18. J. M. Brock 121
19. Roy E. Brogden 10
20. R. W. Bruschke
21. Walter H. Bruschke 11
22. Bailey Bryant
23. Robert T. Bryant
24. Edd Bryson
25. T. R. Butts 12
26. Cecil R. Carter 13
27. Clarence Carter
28. M. J. Chancey 14
29. Norman G. Chesser
30. Noah Lee Clark 15
31. W. F. Clark 16
32. George M. Coleman
33. J. P. Conner
34. J. T. Conner 17
35. Z. W. Conner 18
36. J. J. Conner 19
37. F. F. Crews
38. Hugh Crews
39. Ivey B. Crews (Buck)
40. J. Earl Crews 20
41. J. Elbert Crews
42. J. Melton Crews
43. Jimmie H. Crews
44. Julian Crews 21
45. M. J. Crews
46. Mose Crews (Beulah)
47. Frank H. Davis 22
48. S. J. Davis, Sr.
49. B. Hoyt Deloach 2
50. L. H. Devane
51. D. R. Dinkins
52. Dell Dinkins
53. Theo Dinkins 24
54. Lee Dixon 25
55. Ralph J. Duggan, Sr.
56. Robert Earley
57. James L. Eaton 26
58. J. N. Elder
59. J. L. Eunice, Sr.
60. Lawrence Flewell
61. Marion P. Gantt
62. M. A. Gay 27
63. Charles H. Gibson 28
64. W. E. Gibson
65. C. E. Glenn 29
66. B. H. Gowen
67. C. C. Gowen 30
68. E. C. Gowen

69. Ferris D. Gowen
70. G. B. Gowen, III
71. B. W. Gowen
72. S. H. Gowen 31

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73. T. C. Gowen 32
    Lonnie Guinn
75. J. S. Haddock, Jr. 33
76. W. C. Hall 34
77. J. O. Hannaford, Jr.
78. Maurice Hannaford
79. W. C. Harden 35
80. L. A. Higginbotham 36
81. J. B. Hinson
82. Roy Hodges
83. A. J. Hopkins, Jr. 37
84. Colquitt D. Hopkins 38
85. H. E. Huggins
86. D. Ray James 39
87. W. O. Johns
88. A. R. Johnson 40
89. E. H. Johnson, Jr. 41
90. H. R. Johnson 42
91. G. Norris Johnson
92. R. K. Johnson
93. J. A. Jones, Jr.
94. J. C. Jones, Jr.
95. Carl Lane 43
96. Ben H. Lee
97. M. C. Leslie 44
98. Doyle C. Lewis
99. E. R. Lott 45
100. M. A. McAndrew
101. John D. McCoy
102. Robert McCoy
103. J. L. McKendree 46
104. Pete McNeil
105. L. D. Majors 47
106. Jack R. Mays
107. Richard P. Mays 48
108. Alton M. Mizell
109. Harold Mizell
110. Truitt Mizell
111. Wm. Mizell 49
112. O. C. Mizell 50
113. J. B. Moore 51
114. Colonel Morgan
115. W. L. Morris, Sr.
116. C. Francis Murray
117. J. R. Nance 52
118. George A. Nazworth
119. John E. Norris
120. Rudolph Norwood 53
121. J. F. O'Berry
122. Roy O'Berry
123. W. C. Odom
124. C. W. Parnell
125. C. J. Passieu
126. C. L. Passieu
127. Scott Petty
128. S. L. Pickren
129. Verne J. Pickren 54
130. W. W. Pickren 55
131. F. R. Pittman, Sr.
132. Donald P. Prescott 56
133. Eston Prescott
134. J. A. Prevatt
135. O. K. Prevatt
136. H. K. Rigdom
137. E. O. Roberson 57
138. W. W. Roberts
139. Fred M. Roberson
140. J. Frank Roddenberry 58
141. J. L. Rowell 59
142. B. L. Shivar
143. J. W. Shuman 60
144. D. E. Sikes
145. A. D. Simmons
146. Benney Smith
147. Mahlon Smith
148. J. B. Southwell, Jr. 61
149. J. B. Southwell, Sr. 62

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150. Allen Spurlock
151. C. Pearce Stapleton 63
152. E. B. Stapleton, Jr. 64
153. E. B. Stapleton, Sr. 65
154. J. W. Steedley
155. Ivan Steele 66
156. D. L. Stewart, Sr. 67
157. L. Jasper Stokes 68
158. R. B. Stroup
159. W. L. Thomas, Jr.
160. W. D. Thompson
161. John S. Tison, Jr.
162. J. M. Wade
163. N. G. Wade, III 69
164. D. R. Wainwright
165. Kenneth T. Wainwright
166. G. W. White
167. Harold T. White 70
168. R. H. Wildes, Sr.
169. Kenneth Williams 122
170. Morris E. Williams
171. Larry Williamson
172. A. E. Willingham
173. Fred C. Woodall 71
174. W. L. Woolard
175. Joe H. Zanders
176. O. S. Aldridge
177. Vernon Brock 72
178. James I. Bryant
179. Harry Chesser 73
180. J. T. Chesser
181. Willie M. Chesser
182. Roland Dixon
183. Glenn Gibson 74
184. A. G. Gowen
185. Albert Gowen
186. Charlie E. Harden
187. Lewis Harden
188. O. F. Harden
189. J. D. Hickox 75
190. J. C. Jones, Sr. 76
191. Thomas Knowles
192. John R. Leitch
193. T. H. McLean, Sr. 77
194. James G. Roddenberry
195. Tommy Roddenberry
196. Dennis Snowden
197. B. C. Taylor 78
198. Roy A. Taylor
199. Charles C. Bagwell
200. John A. Barker 79
201. George E. Bell
202. Carl Combs
203. Lacy Conner
204. L. F. Crawford
205. Harold Crawford 80
206. Willie Crews
207. Dean Crews
208. Fell Crews 81
209. Henry Crews
210. Leon Crews 82
211. Willie Dixon 83
212. L. R. Gainey
213. C. L. Hodges
214. Willie H. Hodges 84
215. Jack Hutson
216. Oscar H. Leckie
217. Fed Privett 85
218. Gilbert Privet
219. Noah Rhoden
220. W. R. Simpson 86
221. Noah Stokes

[fol. 357]

222. M. O. Suggs
223. W. R. Sutton
224. Harold Thomas 87
225. Orival Thompson
226. Bruce Thompson
227. Vinton Thompson
228. Enoch Burnsed 88
229. Alton Crawford 89

230. Sampson Crews
231. Earl Davis
232. Raiford Gainey
233. Wallace Hodges
234. N. J. Raulerson
235. Clyde Sands 90
236. Aaron Thrift
237. Buford Thrift 91
238. L. C. Black
239. Matthew Carter
240. Morgan Chesser 92
241. James B. Coleman 93
242. Kenneth M. Crews
243. Herbert Crews
244. Lewis Crews
245. Alton Dinkins 94
246. W. B. Dinkins 95
247. Barney B. Bowen
248. N. A. Griffin
249. S. M. Howard 96
250. H. P. McDuffie
251. Robert N. Staton 97
252. Jerald Todd
253. Holton Todd
254. Jimmie Todd
255. Theo Tucker
256. George W. Crews 98
257. Hershel Crews
258. Wilbur Crews 99
259. Tom W. Harris 100
260. J. E. Johns
261. B. M. Prescott, Sr. 102
262. Everett Thrift
263. Alvin K. Sixeas
264. C. F. Adkins
265. Robert Adkins
266. W. R. Allen, Jr.
267. J. J. Johns
267. J. J. Johns 104
268. T. J. O'Quinn 105
269. Pasco S. Bryant
270. J. H. Barfield
271. Walter B. Crews
272. Julian L. Crews
273. M. G. White 106
274. Nathan Crews
275. S. J. Davis, Jr. 107
276. Harold Lee Guinn
277. Sammie Hendrix 108
278. Demery Lloyd
279. Oscar Petty
280. R. L. Guy 109
281. M. E. Powell 110
282. Ira Rogers, Sr.
283. J. M. Jackson
284. E. S. Lundell
285. G. N. Bryant 112
286. M. D. Thrift 113
287. Arthur Carter 114
288. Champ Crews
289. J. D. O'Quinn
290. W. C. Hopkins 115
291. Yulee Privett
292. Dayton Woolard
293. Clyde Woolard
294. Thomas H. Crews 116
295. R. G. Vinson

[fols. 358-359]

296. Leonard Crews
297. W. E. Stuckey 117
298. W. L. Thomas, Sr.
299. Everett Prescott
300. Jesse Gaskin
301. Mose Austin
302. Ed Brown
303. Sam Hannan
304. Joe Walker
305. James Mack
306. Clyde Walker

[fols. 360-361] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 15

1. J. C. Adams
2. C. F. Adkins
3. Loyce Aldridge
4. E. F. Allen
5. Lawrence Allen
6. W. R. Allen, Sr.
7. W. R. Allen, Jr.
8. Hiram Altman
9. James Altman
10. O. M. Altman
11. S. M. Altman
12. Luke C. Andrews
13. Fred Askew, Jr.
14. Leon Askew
15. J. H. Barfield
16. Hubert Bashler
17. E. M. Batten, Jr.
18. George N. Birdsong
19. R. H. Bragg, Sr.
20. J. M. Brock
21. Roy E. Brodgen
22. R. W. Bruschke
23. Walter H. Bruschke
24. Bailey Bryant
25. J. W. Bryant
26. Pasco S. Bryant
27. Robert T. Bryant
28. Edd Bryson
29. Bud Cantrell
30. T. R. Butts
31. Cecil R. Carter
32. Clarence Carter
33. M. J. Chancey
34. Norman G. Chesser
35. Noah Lee Clark
36. W. F. Clark
37. C. L. Conner
38. J. J. Conner
39. J. T. Conner
40. Z. W. Conner
41. Robert L. Corley
42. Irvin Crews
43. F. F. Crews
44. Hilton Crews
45. Hugh Crews
46. Ivy B. Crews (Buck)
47. J. M. Crews
48. J. Earl Crews
49. J. Elbert Crews
50. Jimmy H. Crews
51. Julian L. Crews
52. M. J. Crews
53. Mose Crews (Bula)
54. Nathan A. Crews
55. Riley W. Crews
56. Thomas H. Crews
57. Walter B. Crews (City)
58. Eugene Davis
59. Frank H. Davis
60. L. F. Davis
61. S. J. Davis, Sr.
62. S. J. Davis, Jr.
63. B. Hoyt Deloach
64. L. H. Devane
65. D. R. Dinkins
66. Dell Dinkins
67. Theo Dinkins
68. Lee Dixon
69. Ralph J. Duggan, Sr.
70. Alex Druash
71. Robert C. Early
72. James L. Eaton
73. T. W. Edge
74. J. N. Elder

75. Robert Rae Ehion
76. Lucius C. Elkins
77. J. L. Eunice, Sr.
78. Doc Evans
79. Lawrence Flewell
80. W. F. Finley
81. Marion P. Gantt
82. Jessie Gaskin
83. M. A. Gay
84. Charles H. Gibson
85. W. E. Gibson
86. C. E. Glenn
87. B. H. Gowen
88. C. C. Gowen
89. E. Clyde Gowen
90. Ferris D. Gowen
91. G. R. Gowen, III
92. Thomas C. Gowen, Jr.
93. R. W. Gowen
94. S. H. Gowen
95. T. C. Gowen
96. Clyde Guinn
97. Harold Guinn
98. Lonnie Guinn
99. R. L. Guy
100. J. S. Haddock, Sr.
101. W. C. Hall
102. J. O. Hannaford, Jr.
103. Maurice Hannaford
104. W. C. Harden
105. John Harris
106. Robert E. Hill
107. L. A. Higginbotham
108. J. B. Hinson, Sr.
109. Roy Hodges
110. A. J. Hopkins, Jr.
111. Colquitt D. Hopkins
112. W. E. Hopkins
113. H. E. Huggins
114. J. M. Jackson
115. D. Ray James
116. W. O. Johns
117. A. R. Johnson
118. B. S. Johnson
119. E. H. Johnson, Jr.
120. H. R. Johnson
121. G. Norris Johnson
122. R. K. Johnson
123. J. A. Jones, Jr.
124. J. C. Jones, Jr.
125. Virgil Kelly
126. Jeffrey Knowles
127. Wm. H. Knox
128. Carl Lane
129. Ben H. Lee
130. M. C. Leslie
131. Doyle C. Lewis
132. E. R. Lott
133. Dr. E. S. Lundell
134. John D. McCoy
135. Robert McCoy
136. Jim L. McKindree
137. Pete McNeil
138. L. D. Majors
139. Jack R. Mays
140. Richard P. Mays
141. Alton M. Mizell
142. Harold Mizell
143. Truitt Mizell
144. William Mizell, Jr.
145. O. C. Mizell
146. J. B. Moore
147. Coloney Morgan
148. W. L. Morris, Sr.
149. C. Francis Murray
150. J. R. Nance

[fol. 362]

151. George A. Nazworth
152. O. L. Nobles
153. John F. Norris
154. Rudolph Norwood
155. J. F. O'Berry
156. Roy O'Berry

157. W. C. Odom
158. C. W. Passieu
159. C. J. Passieu
160. C. L. Passieu
161. Scott Petty
162. S. L. Pickren
163. Vern J. Pickren
164. W. W. Pickren
165. F. R. Pittman, Sr.
166. John W. Poulson
167. M. F. Powell, Sr.
168. Donald F. Prescott
169. Eston Prescott
170. J. A. Prevatt
171. O. K. Prevatt
172. C. H. Quick
173. H. K. Rigdon
174. F. O. Roberson
175. W. W. Roberts
176. Fred N. Roberson
177. J. Frank Roddenberry
178. Ira L. Rogers
179. J. A. Rowell
180. Jack L. Scott
181. B. L. Shivar
182. John H. Shuman
183. J. W. Shuman
184. D. F. Sikes
185. A. D. Simmons
186. Bennie Smith
187. Mahlon Smith
188. J. B. Southwell, Sr.
189. J. B. Southwell, Jr.
190. Allen Spurlock
191. C. P. Stapleton
192. E. B. Stapleton, Jr.
193. E. B. Stapleton, Sr.
194. J. W. Steedley
195. Ivan Steele
196. D. L. Stewart, Sr.
197. L. Jasper Stokes
198. L. E. Stokes, Sr.
199. Albert Stokes
200. P. O. Stokes
201. C. F. Stroup
202. R. B. Stroup
203. Dr. J. S. Taylor
204. W. L. Thomas, Sr.
205. W. L. Thomas, Jr.
206. W. D. Thompson
207. John S. Tyson, Jr.
208. J. M. Wade
209. N. G. Wade, III
210. D. R. Wainwright
211. Kenneth J. Wainwright
212. G. W. Whtie
213. Harold T. White
214. R. H. Wildes, Sr.
215. Kenneth Williams
216. Morris E. Williams
217. A. F. Willingham
218. Fred C. Woodall
219. Dayton Woolard
220. W. L. Woolard
221. F. H. Wright
222. Joe H. Zanders
223. O. S. Aldridge
224. Vernon Brock
225. James I. Bryant
226. Harry Chesser
227. J. T. Chesser
228. Wm. M. Chesser
229. J. D. Colson
230. Roland Dixon
231. Glenn Gibson
232. A. G. Gowen
233. Albert Gowen
234. Charlie E. Harden
235. Lewis Harden
236. O. F. Harden
237. J. D. Hickox
238. J. C. Jones, Sr.
239. Thomas Knowles
240. John R. Leitch
241. T. H. McClain, Sr.

242. James G. Roddenberry
243. Tommy Roddenberry
244. Dennis Snowden
245. R. F. Taylor
246. Roy A. Taylor
247. Charles C. Bagwell
248. John A. Barker
249. W. D. Bell
250. George E. Bell
251. Lacy Conner
252. L. F. Crawford
253. Harold Crawford
254. Willie Crews
255. Cramp Crews
256. George H. Crews (St. George)
257. Dean Crews
258. Fell Crews
259. Leon Crews
260. Henry Crews
261. Willie Dixon
262. L. R. Gainey
263. R. B. Griner
264. C. L. Hodges
265. Grover Hodges
266. Willie H. Hodges
267. Jack Huston
268. Oscar H. Leckie
269. Fed Privett
270. Gilbert Privett
271. Sherman Raulerson
272. Noah Rhoden
273. W. R. Simpson
274. Noah Stokes
275. W. C. Suggs
276. W. R. Sutton
277. Harold Thomas
278. Orvial Thompson
279. Bruce Thompson
280. Vinton Thompson
281. Enoch Brunsed
282. George Chisom
283. Alton Crawford
284. Johnnie Crawford (Moniac)
285. Rayford Gainey
286. Wallace Hodges
287. Sampson Crews
288. Earl Davis
289. N. J. Raulerson
290. Clyde Sands
291. Aaron Thrift
292. Buford Thrift
293. Alvin K. Sixeas
294. Robert C. Adkins
295. M. G. White
296. Demery Lloyd
297. Oscar Petty
298. G. N. Bryant
299. Everett Prescott
300. L. C. Black

[fols. 363-364]

301. Mathew Carter
302. Morgan Chesser
303. James B. Coleman
304. Kenneth M. Crews
305. Hubert Crews
306. Lewis Crews
307. Alton Dinkins
308. W. R. Dinkins
309. John Drury
310. Barney B. Gowen
311. N. A. Griffin
312. S. M. Howard
313. H. P. McDuffy
314. Robert N. Staton
315. Holton Todd
316. Jimmy Todd
317. John Willie Todd
318. Theo Tucker
319. George W. Crews
320. Wilbur Crewes
321. Tom W. Harris
322. J. F. Jones

323. D. M. Prescott, Sr.
324. Everett Thrift
325. J. J. Johns
326. T. J. O'Quinn
327. Leonard Crews
328. Sammy Hendrix
329. M. D. Thrift
330. Arthur Carter
331. J. D. O'Quinn
332. Mose Austin (Colored)
333. Edd Brown (Colored)
334. Sam Hannon (Colored)
335. Joe Walker (Colored)
336. James Mack (Colored)
337. Clyde Walker (Colored)

[fol. 365] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 16

1. G. N. Bryant
2. J. W. Askew
3. Bob Phillips
4. George E. Bell
5. Roland Dixon
6. Raiford Woolard
7. H. G. Willingham
8. Bud Cantrell
9. J. C. Jones Sr.
10. Ed Brown
11. Harold T. White
12. O. F. Harden
13. J. A. Kendricks
14. Joe H. Zanders
15. Charlie E. Harden
16. Lewis Crews
17. Jim L. McKendree
18. J. A. Nazworth
19. Morris F. Williams
20. J. Elvin Carter
21. Aaron Thrift
22. Robert McCoy
23. W. C. Sanderson
24. Kenneth T. Wainwright
25. Kenneth Williams
26. Vernon Brock
27. Lott W. Turner
28. Roy A. Taylor
29. O. M. Altman
30. B. M. Prescott Sr.
31. Kenneth M. Crews
32. L. C. Black
33. N. J. Raulerson
34. John W. Logan
35. L. D. Majors
36. Donald Prescott
37. Buford Thrift
38. Clyde Sands
39. Wallace Hodges
40. Peter J. Fulton
41. Sampson Crews
42. Willie M. Chesser
43. T. M. Peacock
44. C. L. Passieu
45. Ferris D. Gowen
46. Doyle C. Lewis
47. Lonnie Guinn
48. Riley W. Crews
49. J. L. Rowell
50. R. W. Gowen
51. S. J. Davis Sr.
52. D. R. Dinkins
53. Barney B. Gowen
54. Robert T. Bryant
55. S. J. Davis Jr.
56. L. H. Devane
57. J. E. Bryant
58. M. J. Crews
59. G. R. Gowen III
60. Hilton Crews
61. Mose Crews
62. Jake Petty
63. Roy O'Berry
64. Ivy B. Crews
65. M. E. Powell Sr.
66. Dennis L. Higginbotham
67. R. K. Johnson
68. Enoch Burnsed
69. F. L. Burnsed
70. Celdon Crawford
71. Maurice Hannaford
72. J. Frank O'Berry
73. O. S. Aldridge
74. H. E. Huggins

75. Ernest V. Horne
76. Colquitt D. Hopkins

[fol. 366]

77. L. H. Higginbotham
78. W. C. Harden
79. Roy Hodges
80. E. H. Johnson Jr.
81. Mannie T. Guy
82. Oscar Petty

[fol. 367] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing two pages constitute a true and correct copy of list of Petty Jurors who served at the October, 1963 term of Charlton Superior Court.

Witness my hand and the seal of this court this the 14th day of December, 1963.

Clyde Woolard, Clerk of Superior Court, Charlton County, Folkston, Georgia.

[fol. 368] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT NO. 17

1. Tommy Roddenberry
2. Fed Privett
3. E. R. Lott
4. Herbert Crews
5. C. W. Parnell
6. J. R. Nance
7. Alton Mizell
8. Frank Roddenberry
9. Rudolph Norwood
10. W. W. Pickren
11. George Birdsong
12. Hugh Crews
13. E. Clyde Gowen
14. R. W. Bruschke
15. C. J. Passieu
16. James B. Coleman
17. Alton Dinkins
18. J. H. Brock
19. Ben H. Lee
20. F. R. Pittman Sr.
21. Carl Lane
22. Mahlon Smith

[fol. 369] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing page is a true and correct copy of list of grand jurors who served at the October, 1963, term of Charlton Superior Court.

Witness my hand and the official seal of this court this the 14th day of December, 1963.

Clyde Woolard, Clerk of Superior Court, Charlton County, Folkston, Georgia.

[fol. 370] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 18

1. J. C. Adams
2. C. F. Adkins
3. Loyce Aldrid
4. E. F. Allen
5. Homer W. Allen
6. Lawrence Allen
7. W. R. Allen, Sr.
8. Estes E. Altman
9. James W. Altman
10. O. M. Altman
11. S. M. Altman, Jr.
12. B. A. Anderson
13. James A. Anderson
14. Luke C. Andrews
15. Fred Askew, Jr.
16. J. W. Askew
17. Leon Askew
18. J. H. Barfield
19. Hubert Bashler
20. E. M. Batton, Jr.
21. Julian H. Bennett
22. George N. Birdsong
23. R. H. Bragg, Jr.
24. R. H. Bragg, Sr.
25. J. M. Brock
26. Roy F. Brogden
27. R. W. Bruschke
28. Walter H. Bruschke
29. J. E. Bryant
30. J. W. Bryant
31. James F. Bryant
32. Pasco S. Bryant
33. Robert T. Bryant
34. T. R. Butts
35. Bud Cartrell
36. Cecil R. Carter
37. Clarence Carter
38. M. J. Chancey
39. Norman G. Chesser
40. W. F. Clark
41. C. L. Conner
42. J. J. Conner
43. J. T. Conner
44. J. P. Conner
45. Z. W. Conner
46. Robert L. Corley
47. Oden Crawford
48. Ervin Crews
49. F. F. Crews
50. Hilton Crews
51. Hugh Crews
52. Ivey B. Crews (Buck)
53. J. M. Crews
54. J. Earl Crews
55. J. Elbert Crews
56. Jimmy H. Crews
57. Julian Crews
58. Julian L. Crews
59. M. J. Crews
60. Mose Crews (Beulah)
61. Nathan A. Crews
62. Oscar E. Crews
63. Quinton Crews
64. Riley W. Crews
65. Thomas H. Crews
66. Walter B. Crews (City)
67. Alvin Davis
68. Eugene Davis
69. Frank H. Davis
70. S. J. Davis, Sr.
71. S. J. Davis, Jr.
72. B. Hoyt DeLeach
73. (Copy Illegible)
74. (Copy Illegible)

75. (Copy Illegible)

[fol. 371]

76. Eugene Dinkins
77. Theo Dinkins
78. Lee Dixon
79. Ralph J. Duggan, Sr.
80. B. E. Duke
81. Wilford N. Eason
82. Sam M. Eason
83. T. W. Edge
84. J. N. Elder
85. J. L. Eunice, Sr.
86. Doc Evans
87. Lawrence Flewell
88. W. F. Finley
89. Marion P. Gantt
90. Charles H. Gibson
91. (Copy Illegible)
92. B. H. Gowen
93. Clift Gowen
94. E. Clyde Gowen
95. Ferris D. Gowen
96. G. R. Gowen, III
97. R. W. Gowen
98. S. H. Gowen
99. T. C. Gowen
100. Harold Guinn
101. Lonnie Guinn
102. Mannie T. Guy
103. R. L. Guy
104. J. S. Haddock, Jr.
105. W. C. Hall
106. J. O. Hannaford, Jr.
107. Maurice Hannaford
108. W. C. Harden
109. John Harris
110. R. Ward Harrison
111. Robert E. Hill
112. Dennie L. Higginbotham
113. L. H. Higginbotham
114. Roy Hodges
115. Colquitt D. Hopkins
116. W. C. Hopkins
117. Ernest V. Horne
118. H. E. Huggins
119. J. M. Jackson
120. Bobby Lee James
121. D. Ray James
122. A. R. Johnson
123. E. H. Johnson, Jr.
124. H. R. Johnson
125. G. Norris Johnson
126. R. K. Johnson
127. J. A. Jones, Jr.
128. J. C. Jones, Jr.
129. Virgil Kelly
130. Jeffrey Knowles
131. Carl Lane
132. Ben H. Lee
133. Dominey Lee
134. M. C. Leslie
135. Doyle C. Lewis
136. John W. Logan
137. E. R. Lott
138. Dr. E. S. Lundell
139. John D. McCoy
140. Robert McCoy
141. Jim L. McKendree
142. L. D. Majors
143. Jack R. Mays
144. Richard P. Mays
145. James M. Mincey
146. Alton M. Mizell
147. Harold Mizell
148. Truitt Mizell
149. Wm. Mizell, Jr.
150. O. C. Mizell
151. J. B. Moore
152. J. E. Moore
153. S. D. Moore
154. Colonel Morgan
155. W. L. Morris, Sr.

156. C. Francis Murray
157. J. R. Nance
158. George A. Nazworth
159. J. A. Nazworth
160. Donald Nettles
161. John E. Norris
162. Rudolph Norwood
163. J. Frank O'Berry
164. Roy O'Berry
165. W. C. Odir
166. (Copy Illegible)
167. J. T. Pascal
168. C. J. Passieu
169. C. L. Passieu
170. T. M. Peacock
171. Jake Petty
172. Oscar Petty
173. Scott Petty
174. Bob Phillips
175. E. L. Phillips
176. Donald Phillips
177. S. L. Pickren
178. Vern J. Pickren
179. W. W. Pickren
180. F. R. Pittman, Sr.

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181. M. E. Powell, Sr.
182. Donald P. Prescott
183. Eston Prescott
184. Everett Prescott
185. Oliver Prescott
186. J. A. Prevatt
187. O. K. Prevatt
188. Wm. F. Price
189. O. E. Raynor
190. H. K. Rigdon
191. E. O. Roberson
192. W. W. Roberts
193. Charles Davis Roberts
194. Fred N. Roberson
195. J. Frank Roddenberry
196. Ira L. Rogers, Sr.
197. J. L. Rowell
198. W. C. Sanderson
199. Jack L. Scott
200. B. L. Shivar
201. John H. Shuman
202. John D. Sharpe
203. J. W. Shuman
204. D. E. Sikes
205. Bennie Smith
206. Mahlon Smith
207. J. B. Southwell, Sr.
208. J. B. Southwell, Jr.
209. Allen Spurlock
210. E. B. Stapleton, Jr.
211. E. B. Stapleton, Sr.
212. C. P. Stapleton
213. Ivan Steele
214. D. L. Stewart, Sr.
215. L. E. Stokes
216. L. Jasper Stokes
217. Albert Stokes
218. P. O. Stokes
219. J. W. Steedley
220. Alvin K. Sixeas
221. A. L. Taylor
222. Dr. J. S. Taylor
223. W. L. Thomas, Sr.
224. W. L. Thomas, Jr.
225. W. D. Thompson
226. I. B. Tomlinson
227. Lott W. Turner
228. John S. Tyson, Jr.
229. J. M. Wade
230. N. G. Wade, III
231. D. R. Wainwright
232. Kenneth T. Wainwright
233. G. W. White
234. Harold T. White
235. M. G. White
236. R. H. Wildes, Sr.
237. Kenneth Williams

238. Morris E. Williams
239. A. F. Willingham
240. H. G. Willingham
241. Fred C. Woodall
242. Dayton Woolard
243. Eldon Woolard
244. Raiford Woolard
245. W. L. Woolard
246. Joe H. Zanders
247. O. S. Aldridge
248. Vernon Brock
249. G. N. Bryant
250. James I. Bryant
251. J. W. Burch
252. Harry Chesser
253. J. T. Chesser
254. Willie M. Chesser
255. J. D. Colson

[fol. 373]

256. Bernie Davis
257. Roland Dixon
258. Glenn Gibson
259. A. G. Gowen
260. Albert Gowen
261. Charlie E. Harden
262. Lewis Harden
263. O. F. Harden
264. J. D. Hickox
265. J. C. Jones, Sr.
266. T. H. McLean, Sr.
267. Clarence O'Quinn
268. M. C. Peacock
269. James G. Roddenberry
270. Tommy Roddenberry
271. Dennis Snowden
272. Owen M. Taylor
273. R. C. Taylor
274. Roy A. Taylor (son of Richard Taylor)
275. Francis Turner
276. J. E. Turner
277. Charles C. Boswell
278. John A. Barker
279. W. D. Bell
280. George E. Bell
281. Lacy Conner
282. L. F. Crawford
283. Harold Crawford
284. Willie Crews
285. Champ Crews
286. Dean Crews
287. Fell Crews
288. Henry Crews
289. Leon Crews
290. Willie Dixon
291. L. R. Gainey
292. R. B. Griner
293. Edward Hickox
294. C. L. Hodges
295. Grover Hodges
296. Willie H. Hodges
297. Jack Hutson
298. Oscar H. Leckie
299. Fed Privett
300. Gilbert Privett
301. Sherman Raulerson
302. Noah Rhoden
303. W. R. Simpson
304. Noah Stokes
305. W. C. Suggs
306. W. R. Sutton
307. Harold Thomas
308. Enoch Burnsed
309. F. L. Burnsed
310. R. L. Canady
311. George W. Chisim
312. Alton Crawford
313. Celdon Crawford
314. Johnny Crawford
315. Sampson Crews
316. Earl Davis
317. Raiford Gainey
318. Wallace Hodges

319. Clyde Sands
320. Aaron Thrift
321. Buford Thrift
322. N. J. Raulerson
323. L. C. Black
324. Arthur Carter
325. J. Elvin Carter
326. Matthew Carter
327. Morgan Chesser
328. James B. Coleman
329. A. D. Crews
330. Kenneth M. Crews
331. Herbert Crews
332. Leonard Crews
333. Lewis Crews
334. Riley Crews
335. Alton Dinkins
336. W. R. Dinkins
337. Barney B. Gowen
338. N. A. Griffin
339. S. M. Howard
340. J. A. Kendricks
341. Zeak Layton
342. H. P. McDuffie
343. Robert N. Staton
344. James C. Todd
345. Jimmy Todd
346. John Willis Todd
347. Theo Tucker
348. Wilbur Crews
349. Tom W. Harris
350. J. E. Johns
351. J. J. Johns
352. O. K. Lowther
353. T. J. O'Quinn
354. B. M. Prescott, Sr.
355. M. D. Thrift
356. Henry Lee Bailey
357. Edd Brunson
358. Harry Everett
359. Peter J. Fulton
360. Edd Brown
361. Ruby R. Raulerson

[fol. 374] STATE OF GEORGIA,
County of Charlton:

I, the undersigned, hereby certify that the foregoing pages are a true and correct copy of the Petty Jury list as it was revised by the jury commissioners on September 26, 1962 and appears of record in this the office of the Clerk of Superior Court, Charlton County, Georgia in Minute Book "H", pages 171-172.

Witness my hand and the official seal of this court this the 14th day of December, 1963.

Clyde Woodard, Clerk of Superior Court, Charlton County, Folkston, Georgia.

[fol. 375] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 19

List of Jurors in the Case of

Wed.

1. Lawrence Flewell
2. Lewis Crews
3. George W. Chism
4. Charles J. West
5. G. W. Crews
6. W. C. Hall
7. Arnold Johns
8. George E. Bell
9. Julian Crews
10. C. L. Conner
11. S. C. Padgett
12. Sol Houston
13. Cecil A. Parish
14. Kenneth M. Crews
15. Harley Hickox
16. Jimmy H. Crews
17. L. H. Devane
18. Jack R. Mays
19. Bruce L. Thompson
20. Troy Robinson
21. J. A. Prevatt
22. Leon Petty
23. Norris Mitchell
24. Emanuel Knowles
25. Albert Gowen
26. George O. Harden
27. Willie Crews
28. W. C. Harden
29. Charlie Scarbrough
30. Bobby James
31. William Pafford
32. Basil Crews
33. Leon Askew
34. B. M. Prescott, Sr.
35. C. L. Passieu
36. Oscar H. Leckie
37. O. D. Raulerson
38. William Smith
39. Richard P. Mays
40. B. M. Prescott, Jr.
41. T. H. McLean
42. James Vernon Aldridge
43. George Johns
44. F. L. Muarry, Sr.
45. Kenneth T. Wainwright
46. Oscar S. Fowler
47. Allen Nasworth
48. David Clisson
49. Henry L. Bailey
50. Vandell Redmond
51. J. J. Conner
52. W. L. Morris, Sr.
53. Cecil Privett
54. Charlie F. Lloyd
55. Raymond Eugene Chesser
56. Eldon Woolard, Sr.
57. W. E. Renshaw
58. E. M. Batton, Jr.
59. Dr. J. S. Taylor
60. W. F. Price
61. Eugene Davis
62. Earl Crews
63. E. Hickox
64. Jerome Crews
65. W. C. Misell
66. O. K. Lowther
67. Buford Thrift

68. Central Garard
69. Charlie E. Marden
70. Walter N. Coleman, Jr.
71. Donald Nettles
72. Vern J. Pickren

[fol. 376]

1. Lonnie Guinn
2. Herbert M. Crews
3. Lacy Conner
4. L. C. Black
5. Albert Brantley
6. James Bolden
7. Marvin D. Chancey
8. Wallace Hodges
9. Vinton Thompson
10. Edgar Woolard
11. R. L. Canaday
12. H. L. Clark
13. Emory L. Griffis
14. Robert Everett
15. L. R. Gainey
16. Edward Hickox
17. D. E. Sikes
18. Francis Turner
19. Morris Taylor
20. W. C. Odom
21. Bud Cantrell
22. Sherman W. Raulerson
23. Fred D. Askew, Jr.
24. J. D. Hickox
25. Cecil J. Glisson
26. J. T. Pascal
27. Felton Thrift

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IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

DEFENDANT'S EXHIBIT No. 20

United States
Department of Justice

Washington, D.C., December 10 *, 19*63

To all to whom these presents shall come, Greeting:

That JAMES V. BENNETT *whose name is signed to the* ying paper *, is now, and was at the time of signing the same,*

Director, Bureau of Prisons

duly commissioned and qualified.

And, whereof, I, Robert F. Kennedy

Attorney General of the United States, have hereunto caused the Seal of the Department of Justice to be affixed and my name to be attested by the First Assistant, Administrative Division, of the said Department on the day and year first above written.

Robert F. Kennedy

Attorney General.

By Jerris W. Adams

First Assistant, Administrative Division.

[fol. 378] **CERTIFICATE**

District of Columbia) ss:

I, James V. Bennett, Director of the Bureau of Prisons, United States Department of Justice, do hereby certify that in my capacity as Director I am the administrative head and custodian of all such records of the aforesaid Bureau.

I further certify that attached hereto is a true and accurate copy of a statistical report, entitled "Executions 1962", which was published as Number 32 in April 1963 of the regular statistical series entitled "National Prisoner Statistics" by the Bureau of Prisons, United States Department of Justice. This report represents our compilation of figures gathered from reports submitted by each of the States concerning executions and sentences.

In Witness Whereof, I have hereunto set my hand this 10th day of December, 1963.

James V. Bennett
Director, Bureau of Prisons

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NPS

NATIONAL PRISONER STATISTICS

NUMBER 32 • APRIL, 1963

EXECUTIONS

1962

UNITED STATES DEPARTMENT OF JUSTICE

ROBERT F. KENNEDY, *ATTORNEY GENERAL*

BUREAU OF PRISONS

JAMES V. BENNETT, *DIRECTOR*

WASHINGTON 25, D. C.

[fol. 380]

EXECUTIONS 1962

COVERAGE

This report covers the 44 civil jurisdictions in the United States where capital punishment may be legally imposed. These jurisdictions include 42 States, the District of Columbia and the Federal government.

Figures are included on all prisoners executed, or pardoned or whose sentence was otherwise modified during 1962 and all known by officials cooperating in the National Prisoner Statistics program to be under sentence of death as of December 31, 1962. The data were obtained primarily from State prison officials. Also contributing were Federal officials and the administrators of the Cook County, Illinois, and the District of Columbia Jails (the only local institutions in this country where executions are carried out). Prisoners under sentence of death who may still be held in local or county jails ordinarily are not included in NPS figures. Exceptions would be in a few States where prisoners awaiting execution may be transferred to State prisons but subsequently returned to a local jail pending outcome of an appeal or other legal action.

The "under sentence of death" term begins when the court first pronounces the sentence of death for a capital offense and ends with the final disposition of the case, either by execution or otherwise. Many prisoners "under sentence of death" at the close of 1962 had received short stays or reprieves granted by State governors. Also, a large number had appeals before State and/or Federal courts. The remaining had their date of execution set for sometime in 1963; these prisoners, however, could still appeal or receive executive or judicial stays.

EXECUTIONS RISE IN 1962

Forty-seven prisoners were executed by civil authority in the United States during calendar year 1962. This represents a 12 percent increase over the 42 executed in 1961. Calendar year 1962 had the second lowest number of executions on record since 1930 when this national series began.

EXECUTING JURISDICTIONS

One or more executions were carried out in 18 of the 44 jurisdictions whose statutes provide for legal capital punishment. Eleven of these jurisdictions also had executions in 1961. Among the other seven with executions in 1962, New Jersey (2) had had none since 1956, Illinois (2) none since 1958, Iowa (2) none since 1952, Kansas (1) none since 1954, Kentucky (1) none since 1956, Oklahoma (1) none since 1960 and Oregon (1) none since 1953.

California, with 11, had the most executions, followed by Texas with 9 and Florida with 5. These three States accounted for 25, or 53 percent, of the 47 executions carried out during the year.

Among the States with no executions in 1962, but one or more in 1961, were New York with 2 in 1961 and Arizona, Indiana, Louisiana, Maryland, Nevada and North Carolina with one each in 1961.

METHOD OF EXECUTION

Fifteen of the 1962 executions were carried out in the lethal gas chamber. This method was used 32 percent of the time in 1962 as compared with 43 percent in 1961. Twenty-nine executions were by electrocution and the remaining three by hanging. Sixty-two percent of the prisoners executed in 1962 were electrocuted—in 1961, 57 percent were electrocuted. There were no hangings in 1961.

OFFENSE, SEX AND AGE

Of the 47 executed in 1962, one was a woman—the first to be executed in this country since 1957—executed for murder in California. Of the 46 males executed, 40 were for murder, 4 for rape, 1 for assault by a life prisoner (California) and 1 for armed robbery (Texas).

The age of the 47 executed ranged from a 19-year-old executed in Texas for murder to the 58-year-old female executed in California for murder. The median age of the 47 prisoners was 28 years, a drop from the 31.2 median age for the 42 executed in 1961.

ELAPSED TIME FROM FIRST SENTENCE OF DEATH TO EXECUTION

Elapsed time—the period between the first imposition of the death sentence for the instant offense and the day of execution—ranged from 1 month for a robbery offender in Texas to 7 years, 1 month and 20 days for a murderer executed in Illinois. The median elapsed time was 20.5 months which is 4.3 months longer than the 16.2 months recorded in 1961.

Among the prisoners executed in 1962, only 6 (13 percent) of the 47 were received that year. Fourteen (30 percent) were received in 1961, 15 (32 percent) were received in 1960, 8 (17 percent) were received in 1959, 3 (6 percent) in 1958 and 1 (2 percent) in 1955.

There are many reasons for the wide range in elapsed time between the first sentence to death and execution. Appeals which in a few States are automatic following the sentence of the court are made at all levels of the State courts as well as the Federal courts. These together with judicial and executive orders which grant short or long stays or reprieves account for the variation in elapsed time periods.

PRISONERS SENTENCED TO DEATH IN 1962

During calendar year 1962, a total of 99 prisoners received death sentences, 37 less than were reported in 1961. Of the 99, 86 (87 percent) were convicted for murder, 11 (11 percent) for rape and 1 (1 percent) each for armed robbery and assault committed by a life prisoner. All were males, excepting one female convicted of murder in Florida.

At calendar year's end, 87 (88 percent) were still under the sentence of death, 6 (6 percent) had been executed and 6 (6 percent) had their cases disposed of by means other than execution—3 were commuted to life, 2 were granted new trials and 1 had his sentence reversed by the Circuit Court of Appeals.

PRISONERS UNDER SENTENCE OF DEATH AT CLOSE OF 1962

At the beginning of 1962, there were 273 prisoners under sentence of death. By including the 99 received from court during the year, the grand total of prisoners under sentence of death sometime during the

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FIGURE A.--MOVEMENT OF PRISONERS UNDER SENTENCE OF DEATH BY OFFENSE: 1962

Offense	Reported under sentence of death on 1-1-62	Received from court during 1962	Executed		Other disposition not resulting in execution *			Reported under sentence of death 12-31-62		
			Present 1-1-62	Received in 1962	Commutations (a)	Trans. to mental hospital	Other (b)	Total	Year received: 1962	Year received: Prior years
Total	273	99	41	6	27	4	27	267	87	180
Murder	214	86	37	4	16	3	24	216	77	139
Rape	52	11	3	1	11	1	1	46	9	37
Robbery	2	1	-	1	-	-	2	-	-	-
Kidnaping	3	-	-	-	-	-	-	3	-	3
Assault by life prisoner	1	1	1	-	-	-	-	1	1	-
Burglary	1	-	-	-	-	-	-	1	-	1

* Six prisoners received in 1962 - 5 for murder and 1 for rape. Three were commuted to life (includes the rapist), two were granted new trials and one had his sentence reversed by the Circuit Court of Appeals.
(a) Seventeen commuted to life, one committed in 1953 commuted to 199 years, three committed in 1959 commuted to 20 years, five committed in 1960 - 4 commuted to 99 years and one to 80 years, one committed in 1961 commuted to 99 years.
(b) Reversals of judgment, vacated sentences and grants for new trials. Also includes one received in 1959 who committed suicide.

year was 372. Of these 372, 47 were executed during the year and 58 cases were disposed of by means other than execution, leaving a total of 267 awaiting execution at year's end. Thus, there were six less prisoners awaiting execution at the end of 1962 than at year's end 1961 since 99 were received and 105 were disposed of during the year.

Of the 267 awaiting execution at year's end, 216 were "under sentence of death" for murder, 46 for rape, 3 for kidnapping (1 Federal and 2 from New Hampshire), 1 for assault by a life prisoner (California), and 1 for burglary (Alabama).

Over half (52 percent) of the prisoners awaiting execution were distributed among five States—Florida had 38 awaiting, California had 35, Louisiana had 27, Maryland had 22 and New York had 18.

The age of those awaiting execution ranged from a 16-year-old committed for murder in Florida to a 61-year-old murderer in New Jersey. One 17-year-old murderer was awaiting in Georgia, one 18-year-old murderer in Florida, and four 19-year-old murderers—one each in Arkansas, Kansas, New Jersey and South Carolina.

The longest period of elapsed time recorded for those awaiting execution was 9 years, 10 months and 4 days for two prisoners committed for aggravated rape in Louisiana. Elapsed time is figured from date of sentence to 12-31-62. The median elapsed time for the total group was 16.7 months.

OTHER DISPOSITION NOT RESULTING IN EXECUTION

There were 58 prisoners disposed of by means other than execution in 1962. This indicates that 23 percent more "other dispositions" occurred than executions in 1962. Of these 58, 27 had their sentences commuted—17 to life, 1 to 199 years, 5 to 99 years, 1 to 80 years and 3 to 20 years. Four of the 59 were committed or transferred to mental hospitals and, of the remaining 27, 26 had their death sentence reversed or vacated by the courts (many were retried and resentenced) and 1 committed suicide.

Of this group, 43 (74 percent) had been sentenced for murder, 13 (22 percent) had been sentenced for rape and 2 (3 percent) had been sentenced for armed robbery. The elapsed time from sentence of death to disposition ranged from 27 days for a rapist commuted to life in Texas to 9 years, 1 month and 13 days for a murderer commuted to 199 years in Illinois. The median elapsed time for the group was 16.8 months.

MILITARY EXECUTIONS

Excluded from this report are executions carried out by the armed forces. For the 33 year period, 1930 through 1962, the Army (including Air Force) carried out 160 executions, 148 of these during the period 1942-1950, three each in 1954, 1955 and 1957 and one each in 1958, 1959 and 1961. Of the 160 executions, 106 were for murder (including 21 involving rape), 53 were for rape and 1 was for desertion. The Navy has carried out no executions since 1849.

FIGURE B.--COMPARISON OF PRISONERS EXECUTED IN 1962, DISPOSED OF BY OTHER MEANS IN 1962 AND UNDER SENTENCE OF DEATH DECEMBER 31, 1962

(Figures in parentheses show number of females included)

Item	Executed in 1962	Other disposition 1962	Under sentence of death Dec. 31, 1962
Total	(1) 47	58	(2) 267
Age (in years)			
Median age	28.0	27.5	30.1
16 to 19	1	6	8
20 to 24	13	18	(1) 56
25 to 29	16	10	66
30 to 34	5	9	55
35 to 44	10	10	58
45 to 54	1	2	(1) 15
55 and over	(1) 1	2	8
Unknown	-	1	1
Marital status			
Single	20	27	(1) 112
Married	18	21	(1) 98
Separated	4	2	17
Divorced	(1) 4	4	20
Widowed	-	-	10
Common-law	-	-	2
Unknown	1	4	16
Offense			
Murder	(1) 41	43	(2) 216
Rape	4	13	46
Robbery	1	2	-
Kidnaping	-	-	3
Burglary	-	-	1
Assault by life prisoner	1	-	1
Elapsed time (in months)			
Median	20.5	16.6	16.7
3 and under	1	2	8
4 to 6	1	6	27
7 to 12	3	11	34
13 to 18	11	20	(1) 52
19 to 24	6	7	28
25 to 36	11	6	57
37 to 48	(1) 5	3	30
49 to 60	2	2	5
61 to 72	-	1	8
73 to 84	-	1	5
85 to 96	1	-	1
97 and over	-	1	3
Year first received sentence of death			
1953	-	1	3
1954	-	-	-
1955	1	-	-
1956	-	1	2
1957	-	2	6
1958	-	-	2
1959	(1) 2	9	22
1960	13	11	73
1961	14	18	(1) 97
1962	6	6	(1) 87

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TABLE ...--PRISONERS EXECUTED UNDER CIVIL AU...ITY IN THE UNITED STATES, BY RACE AND OFFENSE: 1930 TO 1962

(The figures in parentheses show the number of females. For years 1930-1959 excludes Alaska and Hawaii except for two Federal executions in Alaska, one in 1948 and one in 1950. For coverage see table 3.)

Year	All offenses				Murder				Rape				Other crimes (a)		
	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro	Other	Total	White	Negro
All years.....	3,812	1,722	2,049	41	3,298	1,640	1,619	39	446	45	399	2	68	37	31
Percent....	100.0	-	-	-	86.5	-	-	-	11.7	-	-	-	1.8	-	-
Percent....	100.0	45.2	53.7	1.1	100.0	49.7	49.1	1.2	100.0	10.1	89.5	0.4	100.0	54.4	45.6
1962.....	47	28	19	-	(1) 41	(1) 26	15	-	4	2	2	-	2	-	2
1961.....	42	20	22	-	33	18	15	-	8	1	7	-	1	1	-
1960.....	56	21	35	-	44	18	26	-	8	-	8	-	4	3	1
1959.....	49	16	33	-	41	15	26	-	8	1	7	-	-	-	-
1958.....	49	20	28	1	41	20	20	1	7	-	7	-	1	-	1
1957.....	65	34	31	-	(1) 54	(1) 32	22	-	10	2	8	-	1	-	1
1956.....	65	21	43	1	52	20	31	1	12	-	12	-	1	1	-
1955.....	76	44	32	-	(1) 65	(1) 41	24	-	7	1	6	-	4	2	2
1954.....	81	38	42	1	(2) 71	(1) 37	(1) 33	1	9	1	8	-	1	-	1
1953.....	62	30	31	1	(1) 51	(1) 25	25	1	7	1	6	-	(2) 4	(2) 4	-
1952.....	83	36	47	-	71	35	36	-	12	1	11	-	-	-	-
1951.....	105	57	47	1	(1) 87	(1) 55	31	1	17	2	15	-	1	-	1
1950.....	82	40	42	-	68	36	32	-	13	4	9	-	1	-	1
1949.....	119	30	87	2	107	49	56	2	10	-	10	-	2	1	1
1948.....	119	35	82	2	95	32	61	2	22	1	21	-	2	2	-
1947.....	153	42	111	-	(2)129	(1) 40	(1) 89	-	23	2	21	-	1	-	1
1946.....	131	46	84	1	(1)107	45	(1) 61	1	22	-	22	-	2	1	1
1945.....	117	41	75	1	(1) 90	37	(1) 52	1	26	4	22	-	1	-	1
1944.....	120	47	70	3	(3) 96	45	(3) 48	3	24	2	22	-	-	-	-
1943.....	131	54	74	3	(3)118	(1) 54	(2) 63	1	13	-	11	2	-	-	-
1942.....	147	67	80	-	(1)116	(1) 57	59	-	24	4	20	-	7	6	1
1941.....	123	59	63	1	(1)102	(1) 55	46	1	20	4	16	-	1	-	1
1940.....	124	49	75	-	105	44	61	-	15	2	13	-	4	3	1
1939.....	159	80	77	2	144	79	63	2	12	-	12	-	3	1	2
1938.....	190	96	92	2	(2)155	(2) 90	63	2	25	1	24	-	10	5	5
1937.....	147	69	74	4	(1)133	67	(1) 62	4	13	2	11	-	1	-	1
1936.....	195	92	101	2	(1)181	(1) 86	93	2	10	2	8	-	4	4	-
1935.....	199	119	77	3	(4)184	(2)115	(1) 66	3	13	2	11	-	2	2	-
1934.....	168	65	102	1	(1)154	(1) 64	89	1	14	1	13	-	-	-	-
1933.....	160	77	81	2	151	75	74	2	7	1	6	-	2	1	1
1932.....	140	62	75	3	128	62	63	3	10	-	10	-	2	-	2
1931.....	153	77	72	4	(1)137	(1) 76	57	4	15	1	14	-	1	-	1
1930.....	155	90	65	-	(1)147	(1) 90	(1) 57	-	6	-	6	-	2	-	2

(a) 24 armed robbery, 19 kidnaping, 11 burglary, 8 espionage (6 in 1942 and 2 in 1953), 6 aggravated assault.

TABLE 2.--PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY AGE, RACE, OFFENSE, AND STATE: 1962

(The figures in parentheses show the included executions for rape. All others were for murder except one robbery with firearms (R) in Texas and one assault by life convict (A) in California.)

State and race		All ages	19 years only	20 to 24 years	25 to 29 years	30 to 34 years	35 to 44 years	45 and over
	Median age							
Total.....	28.0	47	1	13	16	5	10	2
White...	27.8	28	-	9	9	3	5	2
Negro...	28.2	19	1	4	7	2	5	-
Alabama: Negro.....		1	-	-	-	-	1	-
California: White.....		8	-	2	2	2	1	1
Negro.....		3	-	1	1	(A) 1	-	-
Colorado: White.....		2	-	-	-	1	1	-
Florida: White.....		2	-	1	1	-	-	-
Negro.....		3	-	1	-	1	1	-
Georgia: Negro.....		1	-	-	1	-	-	-
Iowa: White.....		2	-	1	1	-	-	-
Illinois: White.....		1	-	-	-	-	1	-
Negro.....		1	-	-	-	-	1	-
Kansas: White.....		1	-	1	-	-	-	-
Kentucky: White.....		1	-	-	-	-	-	1
Mississippi: Negro.....		1	-	(1) 1	-	-	-	-
New Jersey: White.....		1	-	-	1	-	-	-
Negro.....		1	-	-	1	-	-	-
Ohio: White.....		2	-	1	1	-	-	-
Oklahoma: White.....		1	-	-	1	-	-	-
Oregon: White.....		1	-	-	-	-	1	-
Pennsylvania: White.....		1	-	-	-	-	1	-
Negro.....		1	-	-	-	-	1	-
South Carolina: White.....		1	-	-	(1) 1	-	-	-
Negro.....		1	-	-	1	-	-	-
Texas: White.....		4	-	(1) 3	1	-	-	-
Negro.....		5	1	(R) 1	2	-	(1) 1	-
Virginia: Negro.....		1	-	-	1	-	-	-

TABLE 3.-PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY STATE: 1930 TO 1962

(Method of Execution in 1962: E-Electrocution, G-Lethal Gas, H-Hanging, S-Shooting or hanging. For years 1930-1959, excludes Alaska and Hawaii except for two Federal executions in Alaska, one in 1948 and one in 1950)

Region and State	Total	1962	1961	1960	1959	1958	1957	1956	1955	1950-54	1945-49	1940-44	1935-39	1930-34
United States.....	3812	47	42	56	49	49	65	65	76	413	639	645	890	776
FEDERAL(a).....	31	-	-	-	-	-	2	1	-	6	6	7	8	1
NORTHEAST.....	605	4	3	7	9	4	4	9	25	56	74	110	145	155
New England:														
Maine(b).....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
New Hampshire.....H	1	-	-	-	-	-	-	-	-	-	-	-	1	-
Vermont.....E	4	-	-	-	-	-	-	-	-	2	1	-	-	1
Massachusetts.....E	27	-	-	-	-	-	-	-	-	-	3	6	11	7
Rhode Island(b).....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Connecticut.....E	21	-	-	1	2	-	-	-	3	-	5	5	3	2
Middle Atlantic:														
New York.....E	327	-	2	6	4	4	4	6	7	27	36	78	73	80
New Jersey.....E	73	2	-	-	-	-	-	1	8	8	8	6	16	24
Pennsylvania.....E	152	2	1	-	3	-	-	2	7	19	21	15	41	41
NORTH CENTRAL.....	393	7	2	2	2	7	2	4	1	42	64	42	113	105
East North Central:														
Ohio.....E	170	2	1	2	1	6	1	4	-	20	36	15	39	43
Indiana.....E	41	-	1	-	-	-	-	-	-	2	5	2	20	11
Illinois.....E	90	2	-	-	-	1	-	-	-	8	5	13	27	34
Michigan(b).....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Wisconsin(b).....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
West North Central:														
Minnesota(b).....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Iowa.....H	18	2	-	-	-	-	-	-	-	1	4	3	7	1
Missouri.....G	58	-	-	-	-	-	1	-	1	5	9	6	20	16
North Dakota(b).....	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
South Dakota(c).....E	1	-	-	-	-	-	-	-	-	-	1	-	XX	XX
Nebraska.....E	4	-	-	-	1	-	-	-	-	1	2	-	-	-
Kansas(c).....H	11	1	-	-	-	-	-	-	-	5	2	3	-	XX
SOUTH.....	2,282	22	26	32	31	29	44	41	38	244	419	413	524	419
South Atlantic:														
Delaware(c).....H	12	-	-	XX	XX	XX	-	-	-	-	2	2	6	2
Maryland.....G	68	-	1	-	2	-	1	-	1	2	19	26	10	6
District of Columbia.....E	40	-	-	-	-	-	1	-	-	3	13	3	5	15
Virginia.....E	92	1	4	1	2	3	2	-	1	15	22	13	20	8
West Virginia.....E	40	-	-	-	1	2	-	1	-	5	9	2	10	10
North Carolina.....G	263	-	1	-	-	2	1	1	1	14	62	50	80	51
South Carolina.....E	162	2	5	1	-	-	2	4	4	16	29	32	30	37
Georgia.....E	362	1	3	6	4	6	14	6	4	51	72	58	73	64
Florida.....E	167	5	2	2	10	3	3	7	4	22	27	38	29	15
East South Central:														
Kentucky.....E	103	1	-	-	-	-	-	3	5	8	15	19	34	18
Tennessee.....E	93	-	-	1	1	-	2	-	4	1	18	19	31	16
Alabama.....E	133	1	1	1	2	1	2	1	-	14	21	29	41	19
Mississippi.....G	151	1	5	1	-	3	2	8	8	15	26	34	22	26
West South Central:														
Arkansas.....E	117	-	-	8	6	-	-	1	-	11	18	20	33	20
Louisiana.....E	133	-	1	-	-	3	7	1	2	14	23	24	19	39
Oklahoma.....E	58	1	-	3	-	-	2	1	-	4	7	6	9	25
Texas.....E	288	9	3	8	3	6	5	7	4	49	36	38	72	48
WEST.....	501	14	11	15	7	9	13	10	12	65	76	73	100	96
Mountain:														
Montana.....H	6	-	--	-	-	-	-	-	-	-	-	1	4	1
Idaho.....H	3	-	-	-	-	-	1	-	-	2	-	-	-	-
Wyoming.....G	6	-	-	-	-	-	-	-	-	-	-	2	1	3
Colorado.....G	45	2	1	1	-	-	1	1	-	1	7	6	9	16
New Mexico.....G	8	-	-	1	-	-	-	1	-	2	2	-	-	2
Arizona.....G	36	-	1	1	1	2	1	-	2	2	3	6	10	7
Utah.....S	13	-	-	1	-	1	-	2	1	2	1	3	2	-
Nevada.....G	29	-	1	1	-	-	-	-	-	9	5	5	3	5
Pacific:														
Washington.....H	46	-	-	1	-	-	1	1	-	4	7	9	13	10
Oregon.....G	19	1	-	-	-	-	-	-	-	4	6	6	1	1
California.....G	290	11	8	9	6	6	9	5	9	39	45	35	57	51
Alaska.....	XX	XX	XX	XX	(d)	(d)	(d)	(d)	(d)	(d)	(d)	(d)	(d)	(d)
Hawaii.....	XX	XX	XX	XX	(d)	(d)	(d)	(d)	(d)	(d)	(d)	(d)	(d)	(d)

(a) Carried out in the following States: 1957: Georgia (2); 1956: Missouri; 1954: New York; 1953: Missouri (2), New York (2); 1950: Alaska; 1948: Alaska, Florida, California (3); 1945: Wyoming; 1943: Tennessee; 1942: District of Columbia (6); 1938: Indiana, Illinois, Michigan, Kansas (2); 1936: Indiana, Oklahoma, Arizona; 1930: Kansas. The 3 in Kansas and the 1 in Michigan were carried out in Federal prisons; the others, in State, territorial, or local facilities.

(b) Death penalty illegal as indicated (XX), except that Michigan and North Dakota prescribe the death penalty for treason; North Dakota also permits the death penalty for first-degree murder committed by a prisoner serving a life sentence for first-degree murder; and Rhode Island makes the death penalty mandatory for murder committed by a prisoner serving a life sentence.

(c) Death penalty illegal: South Dakota, 1930-1938; Kansas, 1930-1934; and Delaware beginning April 2, 1958, to December 18, 1961.

(d) Alaska and Hawaii when territories abolished capital punishment in 1957. As States, Alaska and Hawaii are included in this series beginning January 1, 1960.

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TABLE 4.--PRISONERS EXECUTED UNDER CIVIL AUTHORITY IN THE UNITED STATES, BY OFFENSE, RACE, AND STATE: 1930 TO 1962

(The figures in parentheses show the number of females included. For years 1930-1959, excludes Alaska and Hawaii except for two Federal executions in Alaska, one in 1948 and one in 1950)

Region and State	All offenses				Murder			Rape			Armed Robbery			Other offenses		
	Total	White	Negro	Other	White	Negro	Other	White	Negro	Other	White	Negro		White	Negro	
United States	3,812	1,722	2,049	41	(18) 1,640	(12) 1,619	39	45	399	2	5	19	(1)	19	13	12
FEDERAL	31	27	3	1	11	3	(a) 1	2	-	-	1	-	(1)	5	(1)(b) 8	-
SOUTHEAST	605	422	176	7	420	176	7	-	-	-	-	-		2	-	-
New England:																
Maine(c)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
New Hampshire	1	1	-	-	1	-	-	-	-	-	-	-		-	-	-
Vermont	4	4	-	-	4	-	-	-	-	-	-	-		-	-	-
Massachusetts	27	25	2	-	25	2	-	-	-	-	-	-		-	-	-
Rhode Island(c)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
Connecticut	21	18	3	-	18	3	-	-	-	-	-	-		-	-	-
Middle Atlantic:																
New York	327	233	89	5	(4) 231	(1) 89	(d) 5	-	-	-	-	-		2	-	-
New Jersey	73	46	25	2	46	25	(e) 2	-	-	-	-	-		-	-	-
Pennsylvania	152	95	57	-	(1) 95	(1) 57	-	-	-	-	-	-		-	-	-
NORTH CENTRAL	393	249	142	2	248	135	2	1	7	-	-	-		-	-	-
East North Central:																
Ohio	170	103	66	1	(2) 103	(1) 66	(f) 1	-	-	-	-	-		-	-	-
Indiana	41	31	10	-	31	10	-	-	-	-	-	-		-	-	-
Illinois	90	59	31	-	(1) 59	31	-	-	-	-	-	-		-	-	-
Michigan(c)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
Wisconsin(c)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
West North Central:																
Minnesota(c)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
Iowa	18	18	-	-	18	-	-	-	-	-	-	-		-	-	-
Missouri	58	26	32	-	25	25	-	1	7	-	-	-		-	-	-
North Dakota(c)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
South Dakota(g)	1	1	-	-	1	-	-	-	-	-	-	-		-	-	-
Nebraska	4	3	-	1	3	-	(a) 1	-	-	-	-	-		-	-	-
Kansas(g)	11	8	3	-	8	3	-	-	-	-	-	-		-	-	-
SOUTH	2,282	626	1,646	10	575	1,224	8	42	392	2	4	19		5	-	11
South Atlantic:																
Delaware(g)	12	5	7	-	(1) 4	4	-	1	3	-	-	-		-	-	-
Maryland	68	13	55	-	7	37	-	6	18	-	-	-		-	-	-
District of Columbia	40	3	37	-	3	35	-	-	2	-	-	-		-	-	-
Virginia	92	17	75	-	17	54	-	-	21	-	-	-		-	-	-
West Virginia	40	31	9	-	28	8	-	-	1	-	-	-		-	-	-
North Carolina	263	59	199	5	55	(2) 149	(a) 3	6	41	(a) 2	-	-		3	-	-
South Carolina	162	35	127	-	(1) 30	(1) 90	-	5	37	-	-	-		-	-	(h) 9
Georgia	362	66	296	-	63	(1) 232	-	3	58	-	-	6		-	-	-
Florida	167	55	112	-	53	77	-	1	35	-	-	-		1	-	-
East South Central:																
Kentucky(i)	103	51	52	-	47	41	-	1	9	-	3	2		-	-	-
Tennessee	93	27	66	-	22	44	-	5	22	-	-	-		-	-	-
Alabama(i)	133	26	107	-	(2) 24	(1) 88	-	2	20	-	5	-		-	-	(h) 2
Mississippi	151	29	122	-	29	(3) 98	-	-	21	-	3	-		-	-	-
West South Central:																
Arkansas	117	26	90	1	25	73	(a) 1	1	17	-	-	-		-	-	-
Louisiana	133	30	103	-	(1) 30	(1) 86	-	-	17	-	-	-		-	-	-
Oklahoma	58	40	15	3	38	11	(a) 3	-	4	-	1	-		1	-	-
Texas	288	113	174	1	100	105	(a) 1	13	66	-	-	3		-	-	-
WEST	501	198	82	21	386	81	21	-	-	-	-	-		2	5	11
Mountain:																
Montana	6	4	2	-	4	2	-	-	-	-	-	-		-	-	-
Idaho	3	3	-	-	3	-	-	-	-	-	-	-		-	-	-
Wyoming	6	5	1	-	5	1	-	-	-	-	-	-		-	-	-
Colorado	45	39	5	1	39	5	(j) 1	-	-	-	-	-		-	-	-
New Mexico	8	6	2	-	6	2	-	-	-	-	-	-		-	-	-
Arizona	36	26	10	-	(1) 26	10	-	-	-	-	-	-		-	-	-
Utah	13	13	-	-	13	-	-	-	-	-	-	-		-	-	-
Nevada	29	27	2	-	27	2	-	-	-	-	-	-		-	-	-
Pacific:																
Washington	46	39	5	2	38	5	(k) 2	-	-	-	-	-		1	-	-
Oregon	19	16	3	-	16	3	-	-	-	-	-	-		-	-	-
California	290	220	52	18	(4) 209	51	(l) 18	-	-	-	-	-		6	(m) 5	(m) 1
Alaska(n)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX
Hawaii(n)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX		XX	XX	XX

(a) American Indian(s).
(b) Espionage.
(c) Death penalty illegal during entire period, except as explained in Table 3, footnote (b).
(d) 3 Chinese, 1 Filipino, 1 American Indian.
(e) 1 American Indian, 1 Filipino.
(f) Chinese.
(g) Death penalty illegal: South Dakota, 1930-1938; Kansas, 1930-1934; and Delaware beginning April 2, 1958 to December 18, 1961.
(h) Burglary.
(i) In prior reports Kentucky was erroneously reported to have executed 1 female. Alabama, includes 1 female previously counted as a male.
(j) Japanese.
(k) 1 American Indian, 1 Chinese.
(l) 11 Filipinos, 3 Chinese, 1 Japanese, 3 American Indians.
(m) Aggravated assault committed by prisoners under life sentence.
(n) Alaska and Hawaii when territories abolished capital punishment in 1957. As States Alaska and Hawaii are included in this series beginning January 1, 1960.

[fol. 385]

TABLE 5.--MOVEMENT OF PRISONERS UNDER SENTENCE OF DEATH BY STATE AND OFFENSE: 1962
(Figures in parentheses show the number of females included)

Region And State	Prisoners reported under sentence of death: 1-1-62 (a)				Received from court during 1962				Executed in 1962				Other disposition not resulting in execution				Prisoners reported under sentence of death: 12-31-62 (b)			
	Total	Offense			Total	Offense			Total	Offense			Total	Commuted (c)	Trans. to mental hosp.	Other (d)	Total	Offense		
		Murder	Rape	Other		Murder	Rape	Other		Murder	Rape	Other						Murder	Rape	Other
United States	273	214	52	7	99	86	11	2	47	41	4	2	58	27	4	27	267	216	46	5
Federal	1	-	-	(e) 1	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	1
NORTHEAST	38	36	-	2	17	17	-	-	4	4	-	-	10	4	-	6	41	39	-	2
New England:																				
Maine(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
New Hampshire	2	-	-	(e) 2	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	2
Vermont	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Massachusetts	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-
Rhode Island(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Connecticut	1	1	-	-	1	1	-	-	-	-	-	-	1	1	-	-	1	1	-	-
Middle Atlantic:																				
New York	14	14	-	-	10	10	-	-	-	-	-	-	6	3	-	3	18	18	-	-
New Jersey	11	11	-	-	2	2	-	-	2	2	-	-	1	-	-	1	10	10	-	-
Pennsylvania	9	9	-	-	4	4	-	-	2	2	-	-	2	-	-	2	9	9	-	-
NORTH CENTRAL	32	29	3	-	11	11	-	-	7	7	-	-	8	3	1	4	28	26	2	-
East North Central:																				
Ohio	6	6	-	-	3	3	-	-	2	2	-	-	1	1	-	-	6	6	-	-
Indiana	3	3	-	-	3	3	-	-	-	-	-	-	-	-	-	-	6	6	-	-
Illinois	11	11	-	-	1	1	-	-	2	2	-	-	3	1	1	1	5	5	-	-
Michigan(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Wisconsin(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
West North Central:																				
Minnesota(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Iowa	2	2	-	-	-	-	-	-	2	2	-	-	-	-	-	-	-	-	-	-
Missouri	5	2	3	-	4	4	-	-	-	-	-	-	2	1	-	1	7	5	2	-
North Dakota(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
South Dakota	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Nebraska	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kansas	5	5	-	-	-	-	-	-	1	1	-	-	-	-	-	-	4	4	-	-
SOUTH	152	100	49	3	47	35	11	1	22	17	4	1	32	15	3	14	145	100	44	1
South Atlantic:																				
Delaware(g)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Maryland	20	10	10	-	4	3	1	-	-	-	-	-	2	1	-	1	22	13	9	-
District of Columbia	8	8	-	-	-	-	-	-	-	-	-	-	4	-	-	4	4	4	-	-
Virginia	4	3	1	-	2	2	-	-	1	1	-	-	1	-	-	1	4	4	-	-
West Virginia	1	1	-	-	-	-	-	-	-	-	-	-	1	-	-	1	1	1	-	-
North Carolina	5	3	2	-	1	1	-	-	-	-	-	-	2	-	-	2	4	2	2	-
South Carolina	3	1	2	-	3	2	1	-	2	1	1	-	1	-	-	1	5	2	3	-
Georgia	10	7	3	-	-	-	-	-	1	1	-	-	3	1	-	2	6	2	4	-
Florida	30	25	5	-	13	(1) 12	1	-	5	5	-	-	-	-	-	-	38	(1) 32	6	-
East South Central:																				
Kentucky	7	5	-	2	4	4	-	-	1	1	-	-	3	-	-	3	7	7	-	-
Tennessee	9	4	5	-	-	-	-	-	-	-	-	-	-	-	-	-	9	2	7	-
Alabama	11	8	2	1	2	1	1	-	1	1	-	-	3	1	-	2	9	5	4	-
Mississippi	4	1	3	-	2	2	-	-	1	-	1	-	1	1	-	-	4	2	2	-
West South Central:																				
Arkansas	4	2	2	-	2	-	2	-	-	-	-	-	-	-	-	-	6	2	4	-
Louisiana	26	14	12	-	3	3	-	-	-	-	-	-	2	-	-	2	27	15	12	-
Oklahoma	3	3	-	-	1	1	-	-	1	1	-	-	1	-	-	1	3	3	-	-
Texas	7	5	2	-	8	3	4	1	9	6	2	1	2	1	1	-	4	2	2	-
WEST	30	29	-	1	24	23	-	1	14	13	-	1	8	5	-	3	52	51	-	1
Mountain:																				
Montana	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Idaho	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wyoming	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Colorado	5	5	-	-	1	1	-	-	2	2	-	-	-	-	-	-	4	4	-	-
New Mexico	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Arizona	3	3	-	-	4	4	-	-	-	-	-	-	-	-	-	-	7	7	-	-
Utah	3	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	3	-	-
Nevada	2	2	-	-	-	-	-	-	-	-	-	-	2	1	-	1 (h)	1	1	-	-
Pacific:																				
Washington	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-
Oregon	3	(1) 3	-	-	1	1	-	-	1	1	-	-	-	-	-	-	1	1	-	-
California	33	(1) 32	-	1	18	17	1	11	(1) 10	-	1	5	4	-	-	3	35	(1) 34	-	1
Alaska(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Hawaii(f)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX

(a) In a few states because of automatic appeals, as well as appeals by the defendant, prisoners sentenced to death are not immediately transferred to the place of execution. Therefore, the number of prisoners under sentence of death January 1, 1962 is higher than recorded at the close of 1961.
(b) Includes prisoners reported with appeals or other judicial or executive action pending. Excludes prisoners granted new trials.
(c) All commuted to life with the following exceptions: Illinois - 1 commuted to 199 years; South Carolina - 1 commuted to 80 years; Georgia - 3 commuted to 20 years; Tennessee - 5 commuted to 99 years.
(d) Reversals of judgment or vacated sentences. Also includes grants for new trials.
(e) Kidnaping and murder.
(f) Death penalty illegal as indicated (XX), except that Michigan and North Dakota prescribe the death penalty for treason; North Dakota also permits the death penalty for first-degree murder committed by a prisoner serving a life sentence for first-degree murder; and Rhode Island makes the death penalty mandatory for murder committed by a prisoner serving a life sentence.
(g) Death sentence reinstated December 18, 1961.
(h) Suicide.

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[fol. 386]

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[fol. 387] Acknowledgment of Service (omitted in printing.)

[fol. 388] JUDGE'S CERTIFICATE

I hereby certify that exhibits 1, 2, 3, 4, and 19 are true, correct, and complete copies of originals which were introduced and received into evidence on the trial of the non-jury proceedings on defendant's special pleas and motions as had before me in the above-captioned case, commencing on October 7, 1964, and the same are approved as a part of the record herein.

I hereby certify that exhibits 5 through 18 and exhibit 20 are true, correct, and complete copies of originals which were identified and tendered but ruled inadmissible on the trial of the non-jury proceedings on the defendant's special pleas and motions as had before me in the above-captioned case, commencing on October 7, 1964, and the same are approved as a part of the record herein.

This, the 15 day of January, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 389] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

October Term, 1964

No. 1488

[Title omitted]

CHARGE OF THE COURT—January 7, 1965

Gentlemen of the jury, the grand jury at the October term, 1964, of Charlton County Superior Court returned the following indictment: "Georgia, Charlton County. In the Superior Court of said County. The grand jurors selected, chosen and sworn for the County of Charlton, to wit: (Now, here the grand jurors are named. I am not going to read the names of those grand jurors to you.) in the name and behalf of the citizens of Georgia charge and accuse Isaac Sims, Jr., with the offense of rape, for that the said Isaac Sims, Jr., on the 13th day of April in the year 1963, in the County aforesaid, did then and there unlawfully and with force and arms did make an assault on the person of Nola Jean Roberts, and did strike, beat, and choke and wound her, and did have carnal knowledge of and sexual intercourse with the said Nola Jean Roberts, a female, forcibly and against her will, contrary to the laws of said State, the good order, peace and dignity thereof. Charlton Superior Court, October term, 1964."

Now, Gentlemen, you will have this indictment out with you. It is not evidence in the case, but you may refer to it for a more complete statement and understanding of the contentions of the State.

Now, to this indictment, gentlemen, the defendant, Isaac Sims, Jr., has entered his plea of not guilty, and by pleading not guilty he places on the State the burden of proving all the material allegations of the indictment to your satis-
[fol. 390] faction to a moral and reasonable certainty and beyond a reasonable doubt.

The contentions of the State as set out and alleged in the indictment and the defendant's plea of not guilty make the

issue you are called upon to try and determine in this case.

The defendant enters upon the trial of the case with the presumption of innocence in his favor, and this presumption remains with him throughout the trial of the case, and until and unless the State shall overcome and remove it by the introduction of testimony in your presence and hearing sufficient to convince your minds beyond a reasonable doubt of the guilt of the accused.

A reasonable doubt, gentlemen, is a doubt for which you could give a reason, and means just what it says. It is a doubt of a fair minded, impartial juror honestly seeking the truth; not an arbitrary or capricious doubt, but a doubt arising from a consideration of the evidence, or from a lack of evidence, or from a conflict of evidence, or from the statement of the defendant.

If, after considering all the facts and circumstances of the case, giving the defendant's statement just such weight and credit as you think it is entitled to receive, your minds are wavering, unsettled, and unsatisfied, then that is the doubt of the law, and you should acquit; but if such doubt does not exist in your minds as to the guilt of the defendant, then you should convict.

You are made by law the exclusive judges as to the credibility of witnesses. In passing upon their credibility you may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their interest or want of interest, their means and opportunity for knowing the facts to which they testify, the nature [fol. 391] of the facts to which they testify, the probability or improbability of their testimony, and also their personal credibility in so far as the same may legitimately appear upon the trial of the case.

Now, gentlemen, the defendant is allowed to make to the Court and jury just such statement in his own behalf as he sees fit. He may make a sworn statement or he may make an unsworn statement. If he makes an unsworn statement he is not subject to cross examination, and you are authorized to give it such weight and credit only as you think it is entitled to receive. You may believe it in whole or in part, and you may believe it in preference to the sworn testimony in the case.

I charge you, gentlemen of the jury, the purpose of all legal investigations is the discovery of the truth, seeking always for the highest sources and purest evidence,

I charge you that direct evidence is that which immediately points to the question at issue.

Indirect, or circumstantial, evidence is that which only tends to establish the issue by proof of various facts sustaining by their consistency the hypothesis claimed.

In a civil case the preponderance of the evidence is deemed sufficient, but in criminal cases the law goes one step further and requires a greater of mental conviction to authorize a conviction, and the testimony must be sufficient to satisfy your minds and consciences beyond a reasonable doubt.

I charge you further, gentlemen, that a crime shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention.

I charge you further, gentlemen, that when testimony [fol. 392] in the nature of an alleged confession is offered it is for the jury to determine whether or not such alleged confession was, in point of fact, made or not; and if the jury believe there was a confession, then and in that event the following principles of law would govern the jury in determining the weight of such alleged confession:

All admissions shall be scanned with care, and confessions of guilt shall be received with great caution.

A confession alone, uncorroborated by other evidence, will not justify a conviction.

To make a confession admissible it must have been made freely and voluntarily, without being induced by another by the slightest hope of benefit or the remotest fear of injury.

If the jury should believe that a confession was induced by another by the slightest hope of benefit or the remotest fear of injury, then and in that event, gentlemen, it would be the duty of the jury to disregard that testimony.

The amount of corroboration to a confession which has been freely and voluntarily made to authorize a conviction on such confession is a question for the jury.

Gentlemen of the jury, the charge in the indictment is

rape. Rape is the carnal knowledge of a female forcibly and against her will.

In other words, gentlemen, the defendant is charged with having had sexual intercourse with the female named in the indictment forcibly and against her will.

The State must prove, gentlemen, beyond a reasonable doubt that there was a penetration of the female organ of generation, or private parts of the female, by the male organ of generation, or the private parts of the male. [fol. 393] It is sufficient to constitute the act of intercourse whether the penetration be slight or great, but there must be a penetration.

I charge you further, gentlemen, that the State must likewise prove that the carnal knowledge, if any, or sexual intercourse, if any, was accomplished by force and against the will and without the consent of the female alleged to have been raped.

I charge you, gentlemen, that force is an element of the crime of rape, but it may be exerted not only by violence, but also by threats of serious bodily harm which overpowers the female and causes her to yield against her will.

Gentlemen, the testimony of a single witness is generally sufficient to establish a fact, but there are certain exceptions to this rule, and this case presents one of those exceptions, it being the law that the jury could not convict the defendant of the offense for which he is on trial upon the unsupported testimony of the female alleged to have been raped. Before you would be authorized to convict the defendant there must be other evidence, independent of hers, sufficient to connect the accused with the offense charged; and all the evidence, taken together, must convince your minds beyond a reasonable doubt of the guilt of the accused.

It is for you to determine whether the female alleged to have been raped has been so corroborated or not.

It is not necessary that the corroborating evidence, if any, should be of itself sufficient to show the defendant's guilt beyond a reasonable doubt. The jury would be authorized to convict the defendant if they are satisfied of his guilt beyond a reasonable doubt from all the evidence, that [fol. 394] of the female alleged to have been raped, and the corroborating evidence, if any, taken and considered together.

Now, gentlemen, if you believe beyond a reasonable doubt that this defendant, at any time prior to the finding and return of this indictment into open court by the grand jury of this county, did have carnal knowledge of, or sexual intercourse with, the female alleged to have been raped: that it was accomplished by force and against her will and without her consent, you would be authorized and it would be your duty to convict him. Otherwise, not.

I charge you, gentlemen, that the crime of rape shall be punished by death, unless the jury recommends mercy, in which event punishment shall be imprisonment for life; provided, however, that the jury in all cases may fix the punishment by imprisonment and labor in the penitentiary for not less than one nor more than twenty years.

Gentlemen of the jury, if you should believe beyond a reasonable doubt under the rules of law that I have given you in charge and all the facts and circumstances of the case that the defendant is guilty, the form of your verdict would be, "We, the jury, find the defendant guilty." Now, gentlemen, that form of your verdict would carry the death penalty.

In the event you find the defendant guilty you would have the right to recommend him to the mercy of the Court, and in that event the form of your verdict would be, "We, the jury, find the defendant guilty, and recommend him to the mercy of the Court."

Now, gentlemen, that form of your verdict would carry punishment by imprisonment in the penitentiary for life. [fol. 395] And then, gentlemen, in the event you find the defendant guilty you may fix his punishment at not less than so many years, which could not be less than one, and not more than so many years, which could not be more than twenty, just since the minimum is not less than one and the maximum not more than twenty. For illustration, and for illustration only, you could fix his punishment at ten years, or five years, or twenty years, or at one year, or seven years, just any figure between one and twenty years.

Now, gentlemen of the jury, the defendant has entered his plea of not guilty, and in so doing places the burden upon the State to prove his guilt to your satisfaction and beyond a reasonable doubt.

If you should believe the defendant is not guilty, or if you

should not believe him guilty beyond a reasonable doubt, it will be your duty to acquit him, and in the event you acquit the defendant the form of your verdict will be, "We, the jury, find the defendant not guilty."

Now, gentlemen of the jury, as I said before, you will have this indictment out with you, and whatever your verdict is, let it be written on this indictment, signed by one of your number as foreman, dated, and returned into court.

You may retire and consider your verdict.

The within and foregoing charge of the Court is hereby approved as true and correct, and is ordered filed as a part of the record in the case herein stated.

At Chambers, Waycross, Georgia, this 7 day of January, 1965.

Ben Hodges Judge, Superior Courts, Waycross Judicial Circuit.

[fol. 396] [File endorsement omitted.]

[fol. 397] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

SENTENCE OF THE COURT OCTOBER 8, 1964

STATE OF GEORGIA,
County of Charlton:

Whereupon, the jury having found the defendant, Isaac Sims, Jr. guilty of the offense of Rape, without a recommendation of mercy, it is considered, sentenced and adjudged by the court that said defendant be carried from the bar of this court to the common jail of Charlton County, Georgia, and there held in safe-keeping until called for by a guard from the State Board of Penal Administration who shall carry him from said jail to the Penal Institution designated by said Board, and there held as provided by law until the 10th day of November, 1964 (not less than 30 nor more than 60 days from date) at which time he shall be electrocuted at said Penal Institution as provided by law.

Granted in open, court, this 8th day of October, 1964.

Ben Hodges J.S.C. Charlton County, Georgia Waycross Judicial Circuit.

[fol. 398] IN THE SUPERIOR COURT OF CHARLTON COUNTY, GEORGIA

No. 1488

[Title omitted]

ORDER DENYING MOTION FOR NEW TRIAL, AS AMENDED—January 15, 1965

The above and foregoing captioned case coming on for hearing before me on the defendant's motion for new trial, as amended and after hearing arguments of counsel,

It Is Hereby Ordered That said motion for new trial, as amended, and each ground thereof be, and is hereby overruled and denied.

This 15th day of January, 1965.

Ben Hodges Judge, Charlton Superior Court, Waycross Judicial Circuit.

[File endorsement omitted.]

[fols. 399-401] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 402] IN THE SUPREME COURT OF GEORGIA

No. 22939

Case No. 1488

IN CHARLTON SUPERIOR COURT, WAYCROSS JUDICIAL CIRCUIT

ISAAC SIMS, JR., Plaintiff-in-Error,

vs.

THE STATE OF GEORGIA, Defendant-in-Error

BILL OF EXCEPTIONS—Filed March 19, 1965

GEORGIA, CHARLTON COUNTY.

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of Georgia:

Be It Remembered That on the 6th day of October, 1964, at the regular October Term, 1964, of the Superior Court of Charlton County, the Grand Jury thereof returned an indictment (No. 1488) against the plaintiff-in-error, charging him with a violation of Title 26, Georgia Code Annotated, Section 1301, a capital felony.

On the 7th day of October, 1964, said indictment came on to be tried before a traverse jury of the said court, the Honorable Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit, presiding. On the 8th day of October, 1964, the said jury returned a verdict of guilty as charged. Pursuant thereto, the Honorable Ben Hodges sentenced the plaintiff-in-error to death by electrocution in the Georgia State Prison at Reidsville, Georgia, on a day certain.

Following conviction and sentencing, the plaintiff-in-error, on October 8, 1964, filed a skeleton motion for new trial. Pursuant to the motion, a show cause order was allowed and set down for hearing on December 15, 1964, and [fol. 403] thereafter continued on motion of counsel for the plaintiff-in-error. Imposition of sentence was stayed and plaintiff-in-error was lodged in the common jail of Ware County, pending further post-conviction proceedings.

On January 15, 1965, the plaintiff-in-error amended his previously filed skeleton motion for new trial. The Court thereupon approved the recitals of fact in the several grounds of the amended motion for new trial and ordered the same filed.

Be It Further Remembered That on the 15th day of January, 1965, the Honorable Ben Hodges entered the following order overruling and denying the motion for new trial, as amended, to-wit:

"Order

The above and foregoing captioned case coming on for hearing before me on the defendant's motion for new trial, as amended and after hearing arguments of counsel,

It Is Hereby Ordered That said motion for new trial, as amended, and each ground thereof be, and is hereby overruled and denied.

This 15th day of January, 1965.

/s/ Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit."

Be It Further Remembered That to the order and judgment of the trial court overruling his motion for new trial, as amended, the defendant, the plaintiff-in-error, then and there excepted and now excepts and assigns the same as error thereon as being contrary to law, contrary to the evidence and contrary to the principles of justice and [fol. 404] equity, and the respective provisions of the State and Federal Constitutions specified in the several grounds thereof, on each and all grounds of said motion for new trial, as amended. Each and every ground of said motion for new trial, as amended, and the rulings thereon are incorporated herein by reference and plaintiff-in-error specifically assigns error upon the respective rulings on each ground of the said motion for new trial, as amended, upon the grounds hereinabove stated.

Be It Further Remembered That to the order and judgment of the trial court overruling his plea in abatement, challenging the legality of the composition of the grand jury which indicted him, the plaintiff-in-error then and

there excepted, now excepts and assigns error thereon as being contrary to law and contrary and in violation of the following provisions of the State and Federal Constitutions, to-wit:

Due process of law and equal protection clauses of the Fourteenth Amendment, United States Constitution, and Article I, paragraph 3 of the Constitution of the State of Georgia of 1945; in that, so plaintiff in error contends, for a period of many years, Negroes have been systematically excluded from service on grand juries in Charlton County and that a Negro was because of his race or color illegally included on the grand jury which indicted the plaintiff-in-error; that the Court erroneously excluded evidence offered by the plaintiff-in-error to show that for a period of many years Negroes had been arbitrarily and systematically excluded from service on grand juries in and for Charlton County; and that the names of persons selected for service upon the grand jury of said county are taken from the jury lists of said county which are in turn compiled by the all-white court-appointed jury commissioners from the tax digests which are maintained and arranged on the basis of race or color, as contended by plaintiff-in-error.

[fol. 405] Be It Further Remembered That to the order and judgment of the trial court overruling his challenge to the array, challenging the legality of the composition of the venire from which the traverse jury which tried him was drawn, the plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the equal protection and due process of law clauses of the Fourteenth Amendment, United States Constitution and Article I, paragraphs 3 and 25, Constitution of the State of Georgia of 1945; in that:

(a) The plaintiff-in-error contends that he made out an uncontraverted case that the statutory devised system and procedure for compiling the jury lists in Charlton County, Georgia, independent of any other facets and aspects of the discriminatory system, operates to cause eligible Negro jurors to be systematically and arbitrarily excluded or included from service on or upon said jury lists;

(b) The six white court-appointed jury commissioners, the plaintiff-in-error contends, did not follow a course of conduct in compiling the jury lists which did not work to

arbitrarily and systematically exclude or include qualified Negro jurors because of their race or color;

(c) Qualified Negroes, as plaintiff-in-error contends, have never been selected or appointed as jury commissioners in Charlton County, Georgia;

(d) The Court erroneously, the plaintiff-in-error contends, excluded evidence offered by the plaintiff-in-error which would have shown that for the past ten years members of the Negro race have been systematically excluded or included from service on traverse juries in Charlton County; that, although the names of Negroes appear on such lists, their names are located at the end of such lists [fol. 406] and that their names were placed at the end of the list by design and not as a mere fortuity;

(e) The evidence, the plaintiff-in-error contends, shows that the alleged revised jury lists from which the traverse jurors were drawn which tried and convicted the plaintiff-in-error was not revised according to the laws of Georgia respecting revision of such lists; and

(f) The evidence, the plaintiff-in-error contends, showed that because of their race or color, at least four Negroes, Sol Houston, Vandell Redmond, Norris Mitchell, and Troy Robinson, were systematically and arbitrarily included on the jury list of ninety-nine (99) names from which the jury was drawn which tried and convicted plaintiff-in-error; that, although the names of at least four Negroes appeared on said list the State Prosecutor, without examination, except statutory voir dire question exercised four of his peremptory challenges to strike said Negroes while exercising only five of the State's ten peremptory challenges.

Be It Further Remembered That to the order and judgment of the trial court overruling his motion to suppress illegally obtained evidence the plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to wit:

Fourth, Fifth, and Sixth Amendments, United States Constitution as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment thereto, and Article I, paragraphs 3 and 5, Constitution of the State of Georgia of 1945; in that, so plaintiff-in-error contends, said

alleged confession was obtained while plaintiff-in-error was without the benefit of counsel and under circumstances and conditions which were greatly coercive, and that plaintiff-in-error did not intelligently and understandingly waive or abandon his right to counsel and did not intelligently and [fol. 407] understandingly sign said confession, as contended by plaintiff-in-error.

Be It Further Remembered That to the order and judgment of the trial court overruling and denying his motion for change of venue, the plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to-wit:

Due process and equal protection of law clauses of the Fourteenth Amendment, United States Constitution, and Article I, paragraphs 3, 5, and 25 of the Constitution of the State of Georgia of 1945; in that, so plaintiff-in-error contends, circumstances and attitudes of the community were such in Charlton County that plaintiff-in-error could not secure a fair and impartial trial within said county and that with a minimum of delay and inconvenience plaintiff-in-error could have secured a fairer and less partial forum in one of the other counties within the Waycross Judicial Circuit, as contended by plaintiff-in-error.

Be It Further Remembered That to the order and judgment overruling his plea in abatement, assailing the constitutionality of Title 26, Georgia Code Annotated, Section 1302, upon its face and as applied, plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to-wit:

Eighth Amendment, United States Constitution, and the equal protection and due process of law clauses of Section 1, Fourteenth Amendment, United States Constitution and Article I, paragraphs 3 and 25, Constitution of the State of Georgia of 1945, in that, so plaintiff-in-error contends, Title 26, Georgia Code Annotated, Section 1302, fails to set out any standards by which the jury is to be guided in imposing punishment; and contravenes evolving standards of

decency and inflicts cruel and unusual punishment; is un-
[fol. 408] equally applied to the plaintiff-in-error because of his race or color and is a facet and aspect of the pattern and practice of sentencing Negroes to death for rape in furtherance of a racial caste system which finds state sanction in the deeply rooted history, public policy, and attitudes which are prevalent within the State of Georgia and particularly in Charlton County, Georgia; and, the court erroneously excluded evidence offered to sustain said claim, as contended by plaintiff-in-error.

Be It Further Remembered That to the order and judgment of the trial court overruling his motion to quash the indictment plaintiff-in-error then and there excepted, now excepts and assigns error thereon as being contrary to law and contrary to and in violation of the following provisions of the State and Federal Constitutions; to-wit:

Fifth Amendment, United States Constitution as made applicable to the State of Georgia by virtue of Section 1, Fourteenth Amendment, thereto, and Article I, paragraphs 3 and 5 of the Constitution of the State of Georgia of 1945; in that, so plaintiff-in-error contends, plaintiff-in-error was illegally indicted on October 6, 1964, by an illegally composed and revised grand jury of Charlton County and thus placed twice in jeopardy of his life and limb as there was at that time and place another indictment returned by the grand jury of said county which was then and there pending for trial charging the same offense, as contended by plaintiff-in-error.

Plaintiff-in-error further shows that the entering of each of the aforesaid orders and judgments was erroneous, contrary to law, and are final orders which are subject to review.

The plaintiff-in-error herein is designated as Isaac Sims, Jr., and the defendant in error is hereafter designated as the State of Georgia, the prosecutor.

[fol. 409] The plaintiff-in-error specifies the following portions of the record in said case as material to a clear understanding of the errors complained of in this his Bill of Exceptions:

1. Indictment Number 1488 and Verdict thereon.
2. Plea in Abatement filed October 7, 1964, challenging

the legality of the composition of the grand jury, with the order of the court thereon.

3. Challenge to the Array filed October 7, 1964, with the order of the court thereon.
4. Motion for Change of Venue filed October 7, 1964, with the order of the court thereon.
5. Motion to Suppress Illegally Obtained Evidence filed October 7, 1964, with the order of the court thereon.
6. Plea in Abatement filed October 7, 1964, attacking the constitutionality of the statute imposing the mandatory death penalty in rape cases and its application to the instant case, with the order of the court thereon.
7. List of Jurors Present Wednesday, October 7, 1964, in the Superior Court of Charlton County from which the jury which tried and convicted the plaintiff-in-error was drawn.
8. Motion for New Trial filed October 8, 1964, and show cause order thereon.
9. Amended Motion for New Trial filed January 15, 1965, with the order of the court thereon approving the recitals of facts in the several grounds thereof.
10. Transcript of the Evidence taken upon the trial of the special pleas and motions with the Judge's Certi- [fol. 410] ficate dated January 15, 1965.
11. Transcript of the Evidence taken on the trial with the Judge's Certificate thereon dated January 15, 1965.
12. Transcript of the Documentary Evidence, with the Judge's Certificate thereon dated January 15, 1965.
13. Charge of the Court to the Jury, with the Judge's Certificate thereon.
14. Sentence of the Court.
15. Order and Judgment of the Court overruling the Motion for New Trial, as amended, dated January 15, 1965.
16. This Bill of Exceptions.

The entries of the filing of each and all of the parts of the record above-specified to be entered and transmitted in the proper order.

The Supreme Court of Georgia has jurisdiction of this case by virtue of Title 2, Georgia Code Annotated, Section 3704, this being a writ of error assigned upon orders and judgments in a capital felony case and thus within the class

of cases coming within the exclusive jurisdiction of this Court.

And Now, within the time provided by law, comes ISAAC SIMS, JR., plaintiff-in-error, and assigning error on all of the rulings complained of as being contrary to law, tenders this Bill of Exceptions and prays that the same may be certified to as provided by law, and transmitted to the Supreme Court of Georgia in order that the alleged errors may be considered and corrected.

Howard Moore, Jr., William H. Alexander, 859½ Hunter St., N. W., Atlanta, Georgia 30314, Attorneys for Plaintiff-in-error.

[fol. 411] PAUPER'S AFFIDAVIT

GEORGIA, WARE COUNTY:

Personally appeared before the undersigned authority, ISAAC SIMS, JR., Plaintiff-in-error, who on oath says that he is unable from his poverty to pay the costs or give security otherwise required, and he is advised by counsel that he has good cause for appeal.

Isaac Sims, Jr.

Subscribed and sworn to before me this 15th day of January, 1965.

Howard Moore, Jr., Notary Public.

My commission expires May 18, 1968.

[fol. 412] WAIVER AND NOTICE OF PRESENTATION

Notice of the time of tender for certification of the within and foregoing Bill of Exceptions is hereby acknowledged, copy received.

This 12th day of February, 1965.

Dewey Hayes, Solicitor General, Waycross Judicial Circuit.

The above Bill of Exceptions tendered this — day of February, 1965.

——, ——, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fol. 413] JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

I do hereby certify that the foregoing Bill of Exceptions is true and contains all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Charlton County, Georgia, is hereby ordered to make out a complete copy of the parts of the record in said case as are in the Bill of Exceptions specified and certify the same as such, and cause the same to be transmitted to the Supreme Court of Georgia in order that the errors alleged to have been committed may be considered and corrected.

This 12th day of February, 1965.

Ben Hodges, Judge, Charlton Superior Court, Waycross Judicial Circuit.

[fols. 414-416] Acknowledgement of Service (omitted in printing).

Certificate of Service (omitted in printing).

[fols. 417-418] [File endorsement omitted.]

[fol. 419] IN THE SUPREME COURT OF GEORGIA

22939

SIMS

v.

THE STATE

OPINION—July 14, 1965

1. (a) The defendant failed to make out a prima facie case of invidious discrimination under the Fourteenth Amendment in his challenge to the composition of the grand jury. Jury lists for prior years would not be relevant in the face of a showing that no discrimination existed in the composition of the present juries.

(b) The challenge to the array on the ground that qualified Negroes have never served as jury commissioners in Charlton County is not meritorious.

(c) The provisions of *Code Ann.* §59-106 are directory only, and the failure to strictly comply with them does not violate any rights guaranteed to defendant.

(d) There is no merit in the plea in abatement challenging the composition of the grand and petit juries on the ground that these jurors were selected from tax digests kept on the basis of race.

[fol. 420] (e) The presumption that the prosecutor is utilizing his peremptory challenges to obtain an impartial jury is not overcome by allegations that the prosecutor exercised four of his peremptory challenges to strike Negroes from the jury.

2. The trial judge did not abuse his discretion in overruling the motion for change of venue.

3. It was not error to overrule the plea in abatement challenging the constitutionality of *Code Ann.* §26-1302 on three grounds.

4. "Where several indictments for the same offense are pending against the same person, it is immaterial upon which he is first tried."

5. (a) The evidence was sufficient to support the verdict.

(b) It was not error to admit defendant's confession into

evidence. Escobedo v. Illinois, 84 S. Ct. 1758, distinguished.

(c) The trial court having allowed the evidence of the confession to go to the jury since there was no evidence that [fol. 421] it was not voluntary did not thereafter err in leaving to the jury the question of whether or not the defendant's confession was voluntary and in instructing the jury to disregard the confession in the event they should determine that it was not voluntary, particularly since he later approved the verdict of the jury.

(d) Because the jury made no recommendation of mercy, it is unnecessary to determine whether the given charge was error.

6. The ruling made in 5(b) is controlling here.

ARGUED MAY 10, 1965—

DECIDED JULY 14, 1965—

REHEARING DENIED JULY 26, 1965.

Rape. Charlton Superior Court, Before Judge Hodges.

Howard Moore, Jr., Wm. H. Alexander, for plaintiff in error. Dewey Hayes, Solicitor General, Eugene Cook, Attorney General, Rubye G. Jackson, Assistant Attorney General, contra.

[fol. 422] DUCKWORTH, Chief Justice. Issac Sims, Jr., a Negro, was convicted of rape by force in the Superior Court of Charlton County and was sentenced by that court to death by electrocution. (Sim's first conviction for this offense was reversed by this court in *Sims* v. *Balkcom*, 220 Ga. 7 (136 SE2d 766)). Sim's amended motion for new trial having been overruled, he brings his case to this court for review. Error is assigned on the court's orders overruling the challenge to the array, the motion to suppress illegally obtained evidence, the motion for change of venue, the pleas in abatement, the motion to quash the indictment, and the amended motion for new trial.

1. (a) The first, second and fourth grounds of the challenge to the array and the sole ground to the plea in abatement challenging the composition of the grand jury is that the system for compiling jury lists in Charlton County, Ga., operated to systematically and arbitrarily exclude and include Negroes for jury service. It was shown that the jury lists were compiled from tax digests which were maintained on the basis of race. However, one of the jury commissioners testified that race was not a factor in the compilation of jury lists. No evidence was introduced to contradict his testimony. It was shown that there was one Negro [fol. 423] on the grand jury which indicated defendant and at least five Negroes on the jury list from which the jury who tried defendant was made up. The burden of proof was on the defendant to make out a prima facie case of invidious discrimination under the Fourteenth Amendment. Swain v. Alabama, 85 S. Ct. 824, 828. All the defendant showed here, as was done in Swain v. Alabama, 85 S. Ct. 824, a recent United States Supreme Court case involving allegations of discrimination in the selection of jurors, is that the percentage of Negroes on the jury list did not reflect the percentage of Negroes in the county. This is not sufficient to show invidious discrimination. As was said in the Swain case: "a defendant in a criminal case is not constitutionally entitled to demand a proportionate number of his race on the jury which tries him nor on the venire or jury roll from which petit jurors are drawn." Swain v. Alabama, 85 S. Ct. 824, 829.

Under the evidence in this case, the defendant did not make out a prima facie case of invidious discrimination,

and the court did not err in overruling the challenge to the array or the plea in abatement on this ground.

It is also urged that the court erred in excluding certain jury lists which were offered as evidence in connection with [fol. 424] the claims of discrimination against Negro jurors. Jury lists for a ten year period were offered in evidence. All were excluded except for the lists of the jurors from which the juries who indicted and convicted were taken. As mentioned above, there was no showing of discrimination on the juries which indicted and convicted the defendant. This being true, we are of the opinion that the court properly excluded the jury lists for prior years. They would not be relevant in the face of a showing that no discrimination existed in the composition of the present juries.

(b) The third ground of the challenge to the array is that qualified Negroes have never served as jury commissioners in Charlton County. It was stipulated by the parties that no Negroes had served in the last eight years. This contention was decided adversely to defendant in *Avery* v. *Georgia,* 209 Ga. 116, 122 (70 SE2d 716, 721), reversed on other grounds, 345 U.S. 559, and that decision is controlling here.

(c) The fourth ground of the challenge to the array is that the lists from which the traverse jurors were drawn was revised annually instead of biennially or triennially as required by *Code Ann.* §59-106 (Ga. L. 1955, pp. 247-48). There is no merit in this contention. The provisions of the [fol. 425] Code are directory only, and the failure to strictly comply with them does not violate any rights guaranteed to defendant. *Haden* v. *State,* 176 Ga. 304 (1) (168 SE 272); *Daugherty* v. *State,* 59 Ga. App. 898 (2 SE 2d 519).

(d) The ground in the plea in abatement challenging the legal composition of the grand jury and the ground in the plea challenging the legal composition of the petit jury on the ground that the jurors, grand and petit, were taken by the jury commissioners from a list of taxpayers in the tax digests of Charlton County which are kept on the basis of race were properly overruled.

These grounds of the pleas are without merit for two reasons. First *Code* §92-6307 requires county tax receivers to make out separately on the tax digests the names of colored

and white taxpayers. No attack is made on this statute. Secondly, the evidence introduced on the hearing of these pleas shows without dispute that the jury commissioners, in making up the grand and petit jury lists, did so as provided by the laws, and jurors were selected without regard to race or where their names appeared on the tax digests.

(e) The final ground of the challenge to the array is that [fol. 426] four Negroes, because of their race, were systematically included on the jury list and that the State prosecutor exercised four of his peremptory challenges to strike the Negroes. No showing was made that such procedure was customarily followed in order to exclude Negroes from jury service. The decision of the United States Supreme Court in Swain v. Alabama, 85 S. Ct. 824, is decisive on this point. It was there held: "We cannot hold that the striking of Negroes in a particular case is a denial of equal protection of the laws. In the quest for an impartial and qualified jury, Negro and white, Protestant and Catholic, are alike subject to being challenged without cause . . . The presumption in any particular case must be that the prosecutor is using the State's challenges to obtain a fair and impartial jury to try the case before the court. The presumption is not overcome and the prosecutor therefore subjected to examination by allegations that in the case at hand all Negroes were removed from the jury or that they were removed because they were Negroes." Swain v. Alabama, 85 S. Ct. 824, 836-37. The final ground of the challenge to the array is not meritorious.

The court did not err in overruling the plea in abatement [fol. 427] or the challenge to the array.

2. A motion for change of venue on the ground that defendant could not secure a fair and impartial in Charlton County was overruled by the court. This was not error. None of the evidence introduced by the defendant tended to show that an impartial jury could not be obtained in Charlton County. The ruling of a trial judge on a motion for change of venue will not be disturbed by this court unless an abuse of discretion is shown. *Rawlins* v. *State*, 124 Ga. 31(2) (52 SE 1); *Coleman* v. *State*, 141 Ga. 737(1) (82 SE 227). Clearly, the trial judge does not abuse his discretion in overruling the motion when no evidence is introduced to support the allegations of the motion.

3. Defendant's plea in abatement, which challenged the constitutionality of *Code Ann.* §26-1302 (Ga. L. 1960, pp. 266-67) on three grounds was overruled. That Code section provides: "The crime of rape shall be punished by death, unless the jury recommends mercy, in which event punishment shall be imprisonment for life. Provided, however, the jury in all cases may fix the punishment by imprisonment and labor in the penitentiary for not less than one (1) nor more than twenty (20) years." In the plea it [fol. 428] was asserted: (1) the statute does not set out any standards to guide the jury in imposing punishment; (2) the statute imposes cruel and unusual punishment, and (3) the statute is unequally applied to defendant "because of his race and color and is a facet and aspect of the pattern and practice of sentencing Negroes to death for rape in furtherance of a racial caste system which finds state sanction in the deeply rooted history, public policy, and attitudes which are prevalent within the State of Georgia and particularly in Charlton County, Georgia."

The first two grounds of this plea were decided adversely to defendant on the former appearance of the case in this court, *Sims* v. *Balkcom,* 220 Ga. 7 (136 SE2d 766). That decision is controlling on these grounds and requires no elaboration here.

In the third ground of the plea defendant asserted that Code §26-1302 had been applied to deny persons of the Negro race equal protection of the laws in violation of the Federal and Georgia Constitutions in that since 1930 the State of Georgia has executed 58 Negroes and 3 white persons for the crime of rape. The same contention was raised by the defendant in his habeas corpus proceeding following [fol. 429] his first conviction and decided adversely to him (*Sims* v. *Balkcom,* 220 Ga. 7, *supra*) and is controlling here.

The court did not err in overruling the plea in abatement.

4. A motion was made to quash the indictment on the ground that there were two indictments in the case and that the return of the second indictment was improper. It is argued that since defendant's first conviction was reversed by this court in Sims v. Balkcom, 220 Ga. 7, supra, on retrial the case should have been tried on the original indictment and that the return of, and trial on, a second indictment places defendant in double jeopardy. This contention

is lacking in merit. In *Irwin* v. *State,* 117 Ga. 706 (45 SE 48) it was held: "in a criminal proceeding the pendency of a former indictment for the same offense is no ground for a plea in abatement or in bar . . . Where several indictments for the same offense are pending against the same person, it is immaterial upon which he is first tried." See also *Pride* v. *State,* 125 Ga. 750, 751 (54 SE 688) where it was said: "The defendant having sought the opportunity of going into jeopardy the second time for the same offense, [fol. 430] it is competent to put him in jeopardy again, but there is no constitutional or statutory requirement that he should in the second instance be tried upon the same indictment." The court did not err in overruling the motion to quash the indictment.

[fol. 431] 5. (a) The general grounds of the amended motion for new trial are not meritorious. The defendant was convicted of rape by force. The victim testified that the defendant forced her car off the road, dragged her into the woods, pulled her clothes off, and raped her. She also testified that the defendant kept choking her and threatened to kill her if she screamed. Her testimony was fully corroborated by other witnesses. The mother of the victim testified that she saw her daughter about one hour after the attack took place and that the daughter "could hardly walk . . . and her face was streaming blood and it was all swollen and red, and she was just bruised and dirty. Her clothes were in a terrible condition." Dr. Joseph M. Jackson testified that he examined the victim shortly after the attack and that she was "very emotionally upset and almost in a state of shock . . . her face had blood stains, had bruise marks, and there was clotted blood about, particularly, her nose, and the eyes were bloodshot. There were marks on her neck, chest, and breast, and there were marks on her lower abdomen, and her female parts showed evidence of fresh trauma." The doctor also testified that there had been a penetration of her private parts. Defendant's confession was also intro- [fol. 432] duced in evidence. But even without this confession, the above mentioned evidence was sufficient to support the verdict. *Smith* v. *State,* 91 Ga. 10 (16 SE 378); *Holmes* v. *State,* 194 Ga. 849 (7) (22 SE2d 808).

(b) The first ground of the amended motion asserts that the court erred in admitting in evidence the signed written

statement of the defendant in which he confessed the commission of the charged offense and in refusing to strike the testimony of Sheriff Lee relating to the taking of the statement in that the facts and circumstances under which defendant's statement was made were insufficient to support the requirements of due process under the 14th Amendment of the United States Constitution.

The undisputed evidence as to the time and manner in which the statement was taken is as follows: the offense was committed about 10 a.m. on April 13, 1963. About 3 p.m. of the same day the defendant was arrested by Sergeant Sims of the State Patrol. Under instructions of Sergeant Sikes of Charlton County he was taken to the office of Dr. Jackson, and then to the jail in Waycross where he was placed in the custody of Ware County Sheriff Lee. About 6:30 p.m. of the same day, one Dudley Jones, a [fol. 433] Deputy Sheriff of Ware County, saw the defendant whom Jones had known for 12 years or more. No one else was present—Jones asked him what "he was doing up there." Sims replied that he "got in trouble with a white woman in Folkston, Georgia"; "that he raped a white woman in Folkston." Jones asked him whether he wanted to make a statement to that effect to the sheriff. Sims replied that he did. Jones took him to the sheriff's office where his statement was taken, reduced to writing, and signed at about 10:30 p.m. on April 13, 1963.

Sheriff Lee testified that before the defendant made any statement he advised him that he was entitled to an attorney and that the defendant said he did not want an attorney; he advised Sims that any statement he made could be used against him. The sheriff further testified that no threats or promise of hope or benefit or reward were made to induce Sims to make a statement. His statement was reduced to writing and signed by Sims in the presence of the sheriff, the Chief of the Ware County Police, Jones, the deputy sheriff of the county, and B. C. Worley, a constable.

On April 15, 1963, after Sims had been transferred to the Charlton County jail at Folkston, F. F. Cornelious of the [fol. 434] Bureau of Investigation read to the defendant his written statement of April 13 and he asked Sims if it were true. Sims replied "Yes sir, that is right."

The foregoing recital of facts as to the circumstances

under which the statement was made were not denied by the defendant in his examination by his counsel.

The related facts made a prima facie showing that the statement was freely and voluntarily made and admissible in evidence. Code §38-411; *Williams* v. *State*, 208 Ga. 704(2) (69 SE2d 199). However, counsel for the defendant contends that under the ruling in *Escobedo* v. *Illinois*, 378 U.S. 478, 84 S. Ct. 1758, the confession was inadmissible because it was obtained in the course of interrogation by the officers, when the defendant did not have the benefit of counsel, and under the Fourteenth Amendment to the Federal Constitution he was entitled to counsel at this stage of the investigation. In that case the accused while being investigated by police officers requested the services of a lawyer, which request was denied. His lawyer was denied the privilege of seeing or consulting with the accused during the interrogation. It was there held: "We hold, therefore, that where, as here, the investigation is no longer [fol. 435] a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' *Gideon* v. *Wainwright*, 372 U.S., at 342, 83 S. Ct., at 795 and that no statement elicited by the police during the interrogation may be used against him at a criminal trial." *Escobedo* v. *Illinois*, 84 S. Ct. 1758, 1765.

The factual situation in *Escobedo* v. *Illinois* is entirely different from the instant case. Here, the defendant, while not being interrogated by an officer as to any offense, voluntarily made an incriminating admission after he had been warned that it would be used against him and after he had been advised that he was entitled to the services of a lawyer and the defendant said he did not want one. The record discloses that the defendant was 29 years old with a third or fourth grade education. As far as the evidence dis-

closes, he was a man of average intelligence and capable of [fol. 436] understanding the consequences of his acts. While the decision of the majority in the Escobedo case may be as stated by Justice White in his dissenting opinion, viz.: "At the very least the Court holds that once the accused becomes a suspect and, presumably, is arrested, any admission made to the police thereafter is inadmissible in evidence unless the accused has waived his right to counsel." *Escobedo* v. *Illinois,* 84 S. Ct. 1758, 1767, the ruling of the majority does not give to the accused the *absolute right* to the services of a lawyer during the investigative stage of the proceedings against him regardless of his express statement that he does not want a lawyer.

[fol. 437] (c) In ground 3 of the amended motion for new trial error is assigned because the court, after giving appropriate instructions to the jury, left to them the question of whether or not the defendant's confession was voluntary, and instructed the jury to disregard the confession in the event they should determine that it was not voluntary. It is urged that this procedure violates rights guaranteed to defendant under the Fourth, Fifth, Sixth and Fourteenth Amendments of the Federal Constitution. Counsel insists that the decision of Jeckson v. Denno, 378 U.S. 368 (84 SC 1774, LE) (which was a Federal habeas corpus proceeding) is controlling on this ground of complaint. Did we think that the *Jackson* case applied to this case we would unhesitatingly follow it, despite our firm conviction that it is illogical, impracticable and utterly unsound. But when we read that opinion we note a total absence of any consideration therein of the Georgia statute, *Code* §38-420, which provides that a conviction can not rest upon a confession alone, but the confession must be corroborated; or of the [fol. 438] Georgia Statute, *Code* § 38-411, requiring as an indispensable foundation to the introduction of an alleged confession a showing that it was freely and voluntarily made and that it was not induced by another by the slightest fear of punishment nor the remotest hope of reward; or of Georgia Law investing the trial judge with unquestionable power to review the case after conviction, and to set the verdict aside if he is not satisfied with it. *Code* §§ 6-1608; 70-101; 70-102; 70-202; 70-206; 70-208; 110-703; *Rogers* [fol. 439] v. *State,* 101 Ga. 561 (SE ,); *Central of Ga.* v.

Harden, 113 Ga. 483 (SE); *Taylor* v. *Central Railroad & Banking Co. of Ga.*, 79 Ga. 330 (SE); *Mills* v. *State*, 188 Ga. 620 (SE); *Deen* v. *Baxley State Bank*, 192 Ga. 300 (SE 2d). Indeed, the trial judge must approve the verdict, and if he does not, the State cannot review his action in setting aside the conviction. *Code Ann.* § 6-901 (Ga. L. 1957, pp. 224, 232); *State* v. *Jones*, 7 Ga. 422; *State* v. *Lavinia*, 25 Ga. 311; *State* v. *Steele*, 112 Ga. 39 (SE); *Eaves* v. *State*, 113 Ga. 749 (SE). We believe the Supreme Court will consider these facts and agree that the Jackson decision does not apply here.

The Jackson case approves the Massachusetts procedure whereby the judge first renders his judgment as to the voluntariness of the confession, and then submits the same question to the jury. As pointed out by the dissent of Justices Harlan, Clark and Stewart, this procedure is obviously more hurtful to the accused since it would tend to prejudice the jury by having the judge's judgment on [fol. 440] the same question before them while making their verdict, whereas the Georgia rule presents the question to the jury without giving them the judgment of the judge. It is inconceivable that any Justice could fail to see this vital point. But taking the Jackson opinion at what it says is its basis, it merely condemns having the trial of voluntariness joined in the determination of guilt because of a possibility of prejudicing the jury, but when the judge acts after conviction as in Georgia, there is no jury to be prejudiced. The Massachusetts rule requires that the judge, who does not pass upon the guilt or innocence make the determination of voluntariness, which rule is approved in Jackson. Therefore, the crux of the matter as seen by that court is satisfied by Georgia law which empowers the trial judge, after the jury has returned a verdict of guilty to set that verdict aside if he alone is not satisfied with it. To say the judge will be prejudiced is to say even Justices will be prejudiced and, hence, no constitutional trial or re- [fol. 441] view can be had. This means that although initially in passing upon admissibility he heard evidence prima facie showing the voluntariness and allowed the introduction of the confession, but after hearing conflicting evidence on that issue, the judge, whom the Supreme Court does not say will be prejudiced, can and we must assume will, set

the verdict aside if he believes an illegal confession was [fol. 442] considered by the jury. He thus has power to reverse the jury on the question of voluntariness. It would be difficult to find a more complete satisfaction of the requirement of Jackson than Georgia provides. And the unsound implications of Jackson should not be extended one iota to make it cover cases not explicitly covered by it such as this case where there was no evidence to make any issue of voluntariness. Without an issue there is nothing to try.

We are aware of the strange speculation as to how jurors might violate their oaths in the opinion in Jackson, all of which was pure imagination without a scintilla of fact or law to support it. In thus indicting our jury system, that court unjustly reflects upon those officials participating in the trial least subject to criticism. They, the jurors, unlike the judge and other officers, including Supreme Court Justices, do not ask to serve, but are serving only because they obey the court summons to render valuable services to their country, and this without adequate pay. Imperfect though it be, the American jury system is the fairest and purest means of ingenuity of man has found for resolving [fol. 443] issues of fact in court trials. On its record the jury deserves the highest praise of all men and particularly Justices, rather than unfounded speculation as to possibilities of their betrayal of trust and violating their oaths.

As pointed out above we think an affirmance meets the demands of Jackson. But that decision is so shocking in condemning procedures that have been practiced for centuries with the approval of both State and Federal courts, until we think every judge has a duty to speak out loudly against it. Mr. Justice Black, with more service on that court than any other member, could never be called a reactionary, yet he could not approve the opinion of the majority and said so very plainly in these words: "Though able to cite as support for its holding no prior cases suggesting that the New York practice is so unfair to defendants that it must be held unconstitutional, the court does refer to commentators who have made the suggestion. None of these commentators appears to have gathered factual data to support his thesis, nor does it appear that [fol. 444] their arguments are at all rooted in the actual

trial of criminal cases." Here is the heart of the matter, "actual trial". Mr. Justice Clark, correctly in our opinion, points out that since the New York procedure had not been attacked in the trial court it was not proper for the Supreme Court to consider it since the defendant's counsel—who had 50 years experience in practicing law and as a judge—did not object to the statements being put in evidence. In taking that position he stands in the company of thousands of experienced lawyers and judges throughout America.

Then the opinion of Justice Harlan, whom all Americans respect as an outstanding, experienced lawyer, which is concurred in by Justices Clark and Stewart both of whom have had wide experience in the practice of law, specifically enumerated insuperable legal barriers to the majority opinion when he pointed out that only seven years ago that same court in Stein v. New York, 346 U.S. 156 (S Ct , L Ed), directly and explicitly held the same procedure [fol. 445] law valid, and then only a year ago that court in Spano v. New York, 360 U.S. 315 (S Ct , L Ed), reaffirmed its validity. How can the majority expect the rest of us to respect their decisions when they themselves show no respect whatever for them? Justice Harlan shows that that court has repeatedly as in Opper v. United States, 348 U.S. 84, 95 (S Ct , L Ed), rejected *speculation* that a jury would disregard the instructions of the court, yet when the speculation which is no more than imagination of the majority that a jury might disregard instructions is lifted from their opinion there is nothing left.

Mr. Justice Brennan, speaking at the Conference of Chief Justices in New York in 1964, approved and encouraged criticism of court decisions when based upon reason and done with due respect. That duty we are trying to perform now, and we hope he will consider our criticism. It seems to us that when the majority in total disregard for the useless piecemeal trials it forces upon trial courts, with the resulting delays and overburdens of courts, and [fol. 446] contrary to procedure laws that have endured for centuries with judicial approval as to validity twice within seven years by that court, and now by the smallest majority possible—a single Justice—imposes upon the trial

courts of America the personal notions of only five out of the nine Justices of that court, a clear case of refusing to exercise proper judicial self-restraint is made. One would have to claim infallibility who would thus set the mere opinion of the five—void of support by law or precedent—against the foregoing enumerated overyhelming supports for the law they strike down. Justices should remember that they have no monopoly on either wisdom or integrity, and before they indict the reliability of jurors, they should think of the sacred challenge that the guiltless cast the first stone.

We want to do justice and protect the accused in all his rights and we know Georgia law concerning confessions does this, but we simply are finding it frustrating and exceeding difficult to do this when confronted constantly with [fol. 447] a new and strange rule with no basis of law but established by a majority of one of the Supreme Court. Unless that court becomes willing to abide by its own decisions, and respect State laws, we will soon find State courts unable to longer function. If State courts are to effectively perform their duty of administering the criminal laws which protect life, liberty and property, the heavy hand of the Supreme Court in this field must in some way be removed from the throats of State courts.

We yield to no living men in our appreciation of and highest respect for the Supreme Court as a vital part of our Government and its proper supremacy over all courts, including this one. But if those occupying it will not uphold State procedure law that is constitutional and follow their own decisions sustaining those laws, chaos will reign in the lower courts of America. We hope the present Justices will, after more mature consideration overrule Jackson v. Denno, 378 U.S. 368, supra, and allow State courts to try cases according to law rather than the personal notions of [fol. 448] just barely more than half of the Justices. We have always done as we think all Justices should do even in cases of doubtful soundness of a law or decision where there has been long reliances thereon and innocent people, including the State, had acted thereon and would suffer irreparable loss if the law is striken down—applied the rule of stare decisis and upheld it. For it is better that laws of doubtful soundness be certain than that all law stand in

eminent danger of being declared void because it is not written as some Justices would prefer. Legislatures alone determine the wisdom of laws, and courts, despite their belief that the law is unwise, nevertheless are bound by the Constitution to confine their considerations of such laws to their constitutionality alone. Courts possess neither the facilities, the experience, nor the wisdom of legislators to qualify them to pass upon the wisdom of laws.

We affirm the instant case in the belief that we are not violating Jackon v. Denno, 378 U.S. 368, supra, and in the firm conviction that such a judgment will rest upon sound, [fol. 449] tested and just law and is indispensable to law enforcement. We regret to say that, although acting in the utmost of good faith, but apparently unacquainted with the realities and practicalities of orderly procedure in the trial of cases, the majority of our Supreme Court by striking down established rules of procedure in trials are shaking the foundations of orderly judicial trials which can only be followed by chaos in the trial courts of America. The admirable concern of the Supreme Court for the protection of all individual right we fervently hope will not extend to destruction of the superior rights of the public to be protected afainst rapists, robbers, kidnappers and murderers. To do so would betray the highest trust placed in our courts. One should never be allowed to destroy many. We make this plea to the Supreme Court upon the assumption that they like the members of this court seek knowledge and advice, and respect our right, yea, our duty to speak frankly and respectfully when we believe an alarm-[fol. 450] ing injustice is being unintentionally forced upon American courts by their notions of what ought to be rather than what is established by others worthy and qualified to provide.

[fol. 451] (d) In ground 4 of the motion for new trial error is assigned on the following charge: "And then, Gentlemen, in the event you find the defendant guilty you may fix the punishment at not less than so many years, which could not be less than one, and not more than so many years, which could not be more than twenty. For illustration, and for illustration only, you could fix his punishment at ten years, or five years, or twenty years, or at one year, or seven years, just any figure between one and twenty years."

It is urged that the charge "led the jury to believe that it could only fix the term of punishment at any figure between one and twenty years, where in fact and law the jury could fix a minimum and maximum term." The provision for a sentence of not less than one year and not more than 20 years as provided in *Code* §26-1302 applies only where a recommendation of mercy is made by the jury after a finding of guilty. The jury in this case made no recommendation. Whether or not the charge was error need not be determined in view of the verdict. *Golden* v. *State*, 213 Ga. 481 (1) (99 SE2d 882); *Russell* v. *State*, 196 Ga. 275 (4) (26 SE2d 528).

[fol. 452] 6. The same issues are raised in the motion to suppress illegally obtained evidence as were raised in the first ground of the amended motion for new trial. The ruling made on the latter motion in Division 5(b) of this opinion is controlling here, and for the reasons there stated, the court did not err in overruling the motion to suppress illegally obtained evidence.

[fol. 453] *Judgment affirmed. All the Justices concur, except Almand, J., who dissents from the ruling in division 5(c) and from the judgment of affirmance and Cook, J., disqualified. Quillian, J., concurs specially.*

[fol. 454] ALMAND, Justice, dissenting. I dissent only from the ruling of the majority in Division 5c of the opinion and the corresponding Division 5c in the headnote and the judgment of affirmance. As pointed out in this dissent, I would affirm on condition of the outcome of future proceedings in the case.

In Jackson v. Denno, 378 U.S. 368 (84 SC 1774), the Supreme Court of the United States held that the procedural method of passing upon the voluntariness or unvoluntariness of confessions in criminal cases, as practiced and sanctioned by the State of New York, violated the constitutional rights of the defendant. The procedural methods in such cases are the same in the State of Georgia as in the State of New York. The trial court in this case followed the procedure long approved by this court and approved by the United States Supreme Court in Stein v. New York, 346 U.S. 156 (73 SC 1077, LE), until it was overruled on June 22, 1964, by Jackson v. Denno, supra. The instant case was tried subsequent to Jackson v. Denno, supra, and was controlled by the ruling there made.

I would reverse the trial court solely upon the ground that the procedure followed in the instant case for determining the voluntariness of defendant's confession violates the ruling of the United State Supreme Court in Jackson v. Denno, supra, with direction that a jury be impaneled as required in a capital felony case for the sole purpose of determining whether the confession was or was not voluntarily given, and if the court finds it was voluntarily given, it be admitted in evidence and submit the question, under proper instructions, to the jury. If the jury finds that it [fol. 455] was voluntary, the judgment denying a new trial will stand affirmed. But if either the trial judge or the jury finds that it was not voluntarily given, the judgment denying a new trial will stand reversed, and a new trial is ordered on the guilt or innocence of the defendant without the confession being admissible in evidence. *Code* §6-1610. Compare *Wilson* v. *State,* 173 Ga. 275 (5e) (160 SE 319).

[fol. 456] IN THE SUPREME COURT OF GEORGIA

22939

ISAAC SIMMS, JR.

v.

THE STATE

JUDGMENT—July 14, 1965

This case came before this court upon a writ of error from the Superior Court of Charlton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Almand, J., who dissents from the ruling in division five-c and from the judgment of affirmance; and Cook, J., disqualified. Quillian, J., concurs specially.

[fol. 457] IN THE SUPREME COURT OF GEORGIA

No. 22939

[Title omitted]

No change—Denied—All the Justices concur, except Almand J., who dissents—Cook, J., disqualified.

MOTION FOR REHEARING—Filed July 23, 1965

Comes now, ISAAC SIMS, JR., plaintiff-in-error, and within the time allowed by law, files this his Motion for Rehearing in the above-stated case, and for ground thereof, says:

1

The Court misconceived and misconstrued the law applicable to plaintiff's claim that the statutory system or procedure for selecting grand and traverse jurors is inherently unconstitutional. In division 1(d) at page 4 of the opinion, the Court rejects plaintiff's contention stating that "No attack is made on this statute," Georgia Code 92-6307. Plaintiff admits that he does not challenge the facial constitutionality of the statute but presently and throughout these proceedings has attacked the constitutionality of the system established pursuant to this statute. The thrust of this attack is that the statutory system of selecting citizens eligible for jury service from segregated tax digests is indistinguishable from the system of selecting white and colored jurors condemned in *Avery* v. *Georgia*, 345 U.S. 559, and is accordingly unconstitutional. *Avery* struck down the segregated system of selection and the re-
[fol. 458] sulting danger of abuse. Where such a system is used, "an actual showing of discrimination on the basis of comparative numbers of Negroes and whites on the jury lists" is not required. *Williams* v. *Georgia*, 75 S. Ct. 814.

Swain v. *Alabama*, 85 S. Ct. 824, is readily distinguishable from the case at bar. In *Swain*, there was neither a state statute which required the jury commissioners to use segregated tax digests nor was there any evidence at all that the "city directories, registration lists, club and church lists," used contained racial labels. 84 S. Ct. 828. More-

over, there is no evidence here that the jury commissioners conscientiously conferred with members of both races in search of qualified jurors as in *Swain*. *Ibid.* 828, 829.

Mr. Justice White was careful to distinguish the basis of the Court's holding in *Swain* and to clearly demonstrate that the prior law remained unchanged.

Therefore, it is respectfully submitted that the Court has misapplied and misconstrued the law applicable to this ground of plaintiff's jury discrimination claim.

2

The Court misapplied the law applicable to plaintiff's claim that the jury lists were improperly drawn. Georgia Code Annotated 59-106 contains no precatory language. Mandatory langauge is used throughout this code section. The language of Code Section 59-106 is indistinguishable from that used in Code Section 59-701, passed on in *Blevins* v. *State,* 141 S.E. 2d 431. Therefore, plaintiff's conviction can stand in the face of this claim only if the Court is willing to indulge an ad hoc construction of Code Section 59-106 which whittles away longstanding procedures prescribed for the selection of juries.

3

In division 1(a) at pages 2 and 3 of the opinion, the Court [fol. 459] incorrectly decided plaintiff's claim that the court below had erroneously excluded certain jury lists offered to prove a pattern and practice of systematic and arbitrary inclusion and exclusion of Negroes as qualified jurors. Refusal to admit prior years' jury list was manifestly error, and unconstitutional because it impeded fair litigation of a federal question. These lists were particularly relevant. Plaintiff's claim rests in part on the use of tax digests bearing racial labels; prior jury lists demonstrate beyond doubt that where such tax digests have been used in the past discrimination has occurred. Therefore, the Court has clearly decided the ground of plaintiff's claim contrary to law as stated in *Coleman* v. *Alabama,* 84 S. Ct. 1152, and *Carter* v. *Texas,* 177 U.S. 442, 449.

4

In division 1(a) of the opinion at pages 1 and 2, the Court decides the issue whether plaintiff made out a prima facie case of jury discrimination inconsistently with the relevant federal decisions. The Court rejects (1) the inference to be drawn from the use of racially designated tax digests; (2) the use of different colored paper to designate the white and colored sections of those tax digests; and (3) evidence that the jury commissioners first drew from the white section A through Z and then proceeded, if at all, to the colored section. The Court rejects this constitutionally compelled inference of discrimination because "one of the jury commissioners testified that race was not a factor in the compilation of jury lists." Disclaimers of discrimination by the commissioner has no bearing on whether a prima facie case is made out. It is settled that a jury commissioner's testimony that he did not discriminate racially is insufficient alone to rebut a prima facie case of discriminatory selection. *Eubanks* v. *Louisiana,* 356 U.S. 584; *Reece* v. *Georgia,* 350 U.S. 85; *Norris* v. *Alabama,* 294 U.S. 587.

[fol. 460] Plaintiff further submits that such disclaimers could not in any way refute the inference to be drawn from the fact that the opportunity to discriminate racially inheres in the statutory system created for selecting jurors. An intimation to that effect is wholly untenable if not outright ludicrous.

5

In division 5(b) at pages 14 and 15 of the opinion, the Court erroneously rejected plaintiff's claim that his confession obtained while he was without the benefit of counsel was inadmissible. There is no evidence which shows a constitutionally adequate waiver of the right to counsel. Waiver of a valuable constitutional right is not to be lightly inferred absence evidence that plaintiff knowingly and understandingly forewent his right to counsel. *Fay* v. *Noia,* 372 U.S. 391; *Johnson* v. *Zerbst,* 304 U.S. 458.

In division 5(c) as revised by page 22 of the opinion, the Court misconstrued the basis of and thus misapplied the Supreme Court's decision in *Jackson* v. *Denno*, 378 U.S. 368. *Jackson* does not turn on the likelihood that the jury will be prejudiced but upon the existence of a state procedural rule which poses "substantial threats to a defendant's constitutional rights to have an involuntary confession entirely disregarded and to have the coercion issue fairly and reliably determined." 84 Sup. Ct. 1187.

What a trial judge made do when reviewing the case on a post-conviction motion for new trial cannot cleanse the initial procedure followed of its unconstitutional taint. For, the historical facts "found" pursuant to illegal procedures cannot be realistically expected to furnish the basis for correct conclusions if and merely because the trial judge may later apply a correct standard at a different procedural stage. *Rogers* v. *Richmond*, 365 U.S. 534.

[fol. 461] *Jackson* places the burden of initially determining the admissibility of a confession upon the trial judge. Under *Jackson*, the trial judge must do what a Georgia Judge does not in passing on a post-conviction motion for new trial: find the facts independently of the jury and rule on the basis of the facts he himself has found. The trial judge did not do so at any stage of the proceedings. Therefore, the Supremacy Clause compels this Court, despite its own strongly held contrary notions of what the law ought to be, to void plaintiff's conviction. Any other disposition is unauthorized and constitutes an irreparable "breach, rather than the administration of law." *Wrought Iron Range Co.* v. *Johnson*, 84 Ga. 759.

WHEREFORE, movant prays that a rehearing be granted in this case and the decision of the Court be reversed.

Howard Moore, Jr., William H. Alexander, 859½ Hunter St., N.W., Atlanta, Georgia 30314, Counsel for Movant

[fol. 462] ATTACHMENT TO MOTION FOR REHEARING

CERTIFICATE OF PROBABLE CAUSE FOR REHEARING

I, HOWARD MOORE, JR., of counsel for ISAAC SIMS, JR., plaintiff-in-error, do certify that, upon careful examination of the opinion of the Court in this case, I verily believe that the facts stated and law cited in the attached motion for rehearing have been overlooked and misapplied by the Court, which facts and law are material, and, if considered would require a different judgment from that rendered.

I, also, certify that a copy of the within and foregoing motion for rehearing has been served upon the Honorable Dewey Hayes, and the Honorable Peyton Hawes, Jr., counsel for the defendant-in-error, this day, prior to filing.

This 22nd day of July, 1965.

Howard Moore, Jr.

Subscribed and sworn to before me, this 22nd day of July, 1965.

Alice M. Lewis, Notary Public, Georgia State at Large.

My Commission Expires June 24, 1968.

[fol. 463] [File endorsement omitted]

[fol. 464] IN THE SUPREME COURT OF GEORGIA

22939

ISAAC SIMS, JR.,

v.

THE STATE.

ORDER DENYING MOTION FOR REHEARING—July 26, 1965

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Almand, J., dissents. Cook, J., disqualified.

[fol. 465] IN THE SUPREME COURT OF GEORGIA

No. 22939

[Title omitted]

Motion for Rehearing Denied July 26, 1965

MOTION FOR STAY PENDING APPEAL AND/OR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES—Filed July 28, 1965

Now comes the plaintiff-in-error, ISAAC SIMS, JR., in the above-styled appeal and moves this Honorable Court to stay transmission of its remittitur to the Charlton Superior Court, Waycross Judicial Circuit, Georgia, and to stay execution of the sentence imposed upon him by virtue of the verdict and judgment rendered and entered against him in that Court.

As grounds therefor, the plaintiff-in-error shows the following:

1. That on July 14, 1965, this Honorable Court affirmed the judgment of conviction against the plaintiff-in-error in the Court below.

2. On July 23, 1965, the plaintiff-in-error filed a motion for rehearing in said case and that motion was denied by this Court on July 26, 1965.

3. The plaintiff-in-error believes that he has good cause for appeal and/or petition for certiorari to the Supreme Court of the United States and plaintiff-in-error intends to perfect such further appellate remedy with due diligence and within the time allowed by the laws of the United States.

[fol. 466] 4. That unless this Honorable Court stays the transmission of its remittitur and service of sentence, the issues which the plaintiff-in-error seeks to have adjudicated in the Supreme Court of the United States will become moot, since otherwise, the plaintiff-in-error would be summarily resentenced and his life taken by electrocution in the electric chair.

WHEREFORE, the plaintiff-in-error prays that his motion be allowed and transmission of the remittitur and execution of sentence be stayed pending final determination of this cause in the Supreme Court of the United States.

Howard Moore, Jr., William H. Alexander, 859½ Hunter St., N.W., Atlanta, Georgia 30314 Attorneys for Plaintiff-in-Error.

[fol. 467] ORDER

The within and foregoing motion for stay of the transmission of remittitur and of execution of sentence read and considered,

It Is Hereby allowed and ordered filed, and

The transmission of the remittitur and execution of sentence is hereby stayed and by this order is stayed pending final determination of said appeal and/or certiorari in the Supreme Court of the United States.

This 28th day of July, 1965.

H. H. Diechmont Chief Justice, Supreme Court of the State of Georgia.

* * * * * * *

Certificate of Service (omitted in printing.)

[fol. 468] [File endorsement omitted]

[fol. 469] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 470] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No.

ISAAC SIMS, JR., Petitioner,

vs.

GEORGIA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—October 19, 1965

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Nov. 23rd, 1965.

Hugo L. Black, Associate Justice of the Supreme Court of the United States,

Dated this 19th day of October, 1965.

[fol. 471] SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 918 Misc.

ISAAC SIMS, JR., Petitioner,

v.

GEORGIA

On petition for writ of Certiorari to the Supreme Court of the State of Georgia.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 20, 1966

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to Questions 1, 2, 3, 4, and 5 presented by the petition which read as follows:

"1. Whether petitioner's Fourteenth Amendment rights were violated by a conviction and sentence to death obtained on the basis of a confession made under inherently coercive circumstances within the doctrine of Fikes v. Alabama, 352 U.S. 191.

"2. Whether petitioner's Fourteenth Amendment rights were violated by the failure of the Georgia courts to afford a fair and reliable procedure for determining the voluntariness of his alleged coerced confession in disregard of the principle of Jackson v. Denno, 378 U.S. 368.

[fol. 472] "3. Whether petitioner's Fourteenth Amendment right to counsel as declared in Escobedo v. Illinois, 378 U.S. 478, was violated by the use of his confession obtained during police interrogation in the absence of counsel, or whether petitioner's right to counsel was effectively waived.

"4. Is a conviction constitutional where:

(a) local practice pursuant to state statute requires racially segregated tax books and county jurors are selected from such books;
(b) the number of Negroes chosen is only 5% of the jurors but they comprise about 20% of the taxpayers; and
(c) a Negro criminal defendant's offer to prove a practice of arbitrary and systematic Negro inclusion or exclusion based on jury lists of the prior ten years is disallowed.

"5. Where a Negro defendant sentenced to death in Georgia for the rape of a white woman offers to prove that nineteen times as many Negroes as whites have been executed for rape in Georgia in an effort to show that racial discrimination violating the equal protection clause of the Fourteenth Amendment produced such a result, may this offer of proof be disallowed?"

The case is transferred to the appellate docket, as No. 1433.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 20, 1966.

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IN THE

Supreme Court of the United States

October Term, 1966

No. 251

ISAAC SIMS, JR.,

Petitioner,

—v.—

STATE OF GEORGIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

October Term, 1966

No. 251

ISAAC SIMS, JR.,

Petitioner,

—v.—

STATE OF GEORGIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of Georgia and the dissenting opinion of Justice Almand are reported at 221 Ga. 190, 144 S.E.2d 103. A prior conviction for the same offense involved here was set aside in an opinion reported as *Sims* v. *Balkcom,* 220 Ga. 7, 136 S.E.2d 766 (1964).

Jurisdiction

Judgment of the Supreme Court of Georgia was entered July 14, 1965 (R. 345) and rehearing was denied July 26, 1965 (R. 351). On October 19, 1965, Mr. Justice Black extended the time for filing the petition for writ of certiorari to and including November 23, 1965 (R. 355). The petition for writ of certiorari and the motion for leave to proceed *in forma pauperis* were filed November 22, 1965, and granted June 20, 1966 (384 U.S. 998; R. 356-57). Re-

view was limited to the first five questions presented by the petition (R. 356-57).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3), petitioner having asserted below and asserting here, the deprivation of his rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

1. Whether petitioner's Fourteenth Amendment rights were violated by a conviction and sentence to death obtained on the basis of a confession made under inherently coercive circumstances within the doctrine of *Fikes* v. *Alabama,* 352 U.S. 191.

2. Whether petitioner's Fourteenth Amendment rights were violated by the failure of the Georgia courts to afford a fair and reliable procedure for determining the voluntariness of his alleged coerced confession is disregard of the principle of *Jackson* v. *Denno,* 378 U.S. 368.

3. Whether petitioner's Fourteenth Amendment right to counsel as declared in *Escobedo* v. *Illinois,* 378 U.S. 478, was violated by the use of his confession obtained during police interrogation in the absence of counsel, or whether petitioner's right to counsel was effectively waived.

4. Is a conviction constitutional where:

(a) local practice pursuant to state statute requires racially segregated tax books and county jurors are selected from such books;

(b) the number of Negroes chosen is only 5% of the jurors but they comprise about 20% of the taxpayers; and

(c) a Negro criminal defendant's offer to prove a practice of arbitrary and systematic Negro inclusion or exclusion based on jury lists of the prior ten years is disallowed?[1]

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[1] In this brief petitioner will not urge reversal of the decision below upon the ground presented by the fifth question in his petition for certiorari, relating to racially discriminatory application of the death penalty for rape. Petitioner, a pauper, was tried in October, 1964. At that time he had available, to support the contention urged in his plea in abatement (R. 17-18) that Georgia juries discriminate against Negroes in capital sentencing for rape, only the published United States Bureau of Prisons figures showing that between 1930 and 1962 fifty-eight Negroes and three whites were executed for rape in the State. His proffer of this evidence was rejected by the trial judge (R. 93-95)—wrongly we believe—and that ruling was preserved for review by the Georgia Supreme Court (R. 323, 333) and subsequently challenged in the petition for certiorari here.

However, since petitioner's trial, substantial new evidence has become available on the issue. Pursuant to a rigorously conceived research design, an empirical study of the effect of race upon capital sentencing for rape in eleven Southern States including Georgia was undertaken in the summer of 1965 under the sponsorship of the N.A.A.C.P. Legal Defense and Educational Fund. The results of that study are being subjected to statistical analysis on a State-by-State basis and have been proffered or presented through expert testimony in a number of pending cases. See *Maxwell* v. *Bishop*, E.D. Ark., No. PB-66-C-52, decided August 26, 1966, stay granted by Mr. Justice White, September 1, 1966; *Moorer* v. *South Carolina*, 4th Cir., No. 10,526, Memorandum and Order of July 18, 1966 (describing the study). The study lays a firm factual foundation for the attack made in this case, the cases cited, and others, challenging Southern capital punishment for rape under the Equal Protection Clause of the Fourteenth Amendment.

The study to date has involved the expenditure of considerably more than $35,000. Since it supplies evidence supporting petitioner's contention which is vastly more illuminating than the meager showing petitioner attempted to make on the present record in 1964 and—being plainly without petitioner's financial means—obviously will support a "substantial allegation of newly discovered evidence" within the meaning of *Townsend* v. *Sain*, 372 U.S. 293, 313 (1963), it will be available to petitioner in subsequent proceedings, whether on remand following reversal of petitioner's conviction on the grounds urged in this brief or in state or federal collateral attack proceedings. In these circumstances, petitioner's counsel would not urge this Court to premature consideration of a vitally significant constitutional question on the scanty and relatively uninformative record of the present proceeding.

Constitutional and Statutory Provisions Involved

This case involves the Sixth and Fourteenth Amendments to the Constitution of the United States.

This case also involves the following Georgia Statutes:

Ga. Code §38-411 (1933):

Confessions must be voluntary.—To make a confession admissible, it must have been made voluntarily, without being induced by another, by the slightest hope of benefit or remotest fear of injury.

Ga. Code Ann. §59-106 (1965 Rev. Vol.):

Revision of jury lists. Selection of grand and traverse jurors.—Biennially, or, if the judge of the superior court shall direct, triennially on the first Monday in August, or within 60 days thereafter, the board of jury commissioners shall revise the jury lists.

The jury commissioners shall select from the books of the tax receiver upright and intelligent citizens to serve as jurors, and shall write the names of the persons so selected on tickets. They shall select from these a sufficient number, not exceeding two-fifths of the whole number, of the most experienced, intelligent, and upright citizens to serve as grand jurors, whose names they shall write upon other tickets. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse jurors for the county, to be drawn for service as provided by law, except that when in drawing juries a name which has already been drawn for the same term as a grand juror shall be drawn as a traverse juror, such name shall be returned to the box and another

drawn in its stead. (Acts 1878-79, pp. 27, 34; 1887, p. 31; 1892, p. 61; 1899, p. 44; 1953, Nov. Sess., pp. 284, 285; 1955, p. 247.)

Ga. Code §92-6307 (1933):

Entry on digest of names of colored persons.—The tax receivers shall place the names of the colored taxpayers, in each militia district of the county, upon the tax digest in alphabetical order. Names of colored and white taxpayers shall be made out separately on the tax digest. (Acts 1894, p. 31.)

Statement of the Case

Petitioner, Isaac Sims, an indigent, ignorant and illiterate Negro, is under a sentence of death by electrocution imposed by the Superior Court of Charlton County, Georgia following his conviction for the crime of rape. His conviction was affirmed on appeal by the Supreme Court of Georgia, which stayed execution pending this Court's review of petitioner's claims that he was denied rights protected by the Constitution of the United States.

Petitioner had previously been indicted, convicted and sentenced to death at the October 1963 Term of the Superior Court for the same offense. That first conviction was set aside on habeas corpus by the Supreme Court of Georgia, which ordered a new trial on May 7, 1964. *Sims* v. *Balkcom*, 220 Ga. 7, 136 S.E.2d 766 (1964). No appeal from the first conviction had been taken by Sims' court-appointed counsel, the court reporter had destroyed his trial notes, execution had been scheduled for November 13, 1963, and a commutation of sentence had been denied (R. 58, 250-251). One of Sims' present counsel, Mr. Moore, entered the case and initiated the habeas corpus proceedings resulting in

the *Sims* v. *Balkcom* decision and obtained a stay on the day before Sims' scheduled execution.

The indictment leading to this conviction, returned October 6, 1964, charged that Sims raped Nola Jean Roberts on April 13, 1963, in Charlton County (R. 1). The trial commenced the next day, October 7, 1964, and a jury returned a verdict of guilty without recommendation of mercy on October 8, 1964 (R. 2).

The evidence upon which Sims was convicted consisted principally of testimony by the prosecutrix that Sims "forced her car off the road, dragged her into the woods, pulled her clothes off, and raped her" (Opinion below, R. 334), and that he "kept choking her and threatened to kill her if she screamed" (*ibid.*). In addition, there was testimony by Miss Roberts' mother and her physician, Dr. Jackson, as to her condition after the attack, and evidence of several admissions and confessions by the defendant. The circumstances of these admissions and confessions, which Sims contends were involuntary and obtained by coercion, are set forth in detail in Argument I below, pp. 26 to 36. The text of a written confession signed by Sims while in custody appears at R. 226-227. Sims is unable to read or write. The confession was written by a deputy sheriff and read to Sims. The first three sentences and last three paragraphs of the statement were admittedly not statements by Sims but, rather, assertions of the voluntariness of the confession written by the deputy and read to Sims (R. 100-101, 103-104, 218-219).

Petitioner denied understanding the import of the statement and denied his guilt in sworn testimony at a voir dire hearing and in an unsworn statement before the jury (R. 134-135, 248). Sims, in his mid-twenties at the time of arrest, was a pulpwood worker who quit school at age seventeen or eighteen, having completed only the third

grade (R. 128-130). His understanding is severely limited as is illustrated by the following testimony, which is a mere sample of his incapacity as revealed in the record:

Mr. Moore: Do you know what is meant by "the statement can be used against you in court"?

Mr. Sims: Statement can be used against me?

Mr. Moore: Statement can be used against you in court. Do you know what that means?

Mr. Sims: No, sir.

Mr. Moore: Do you know what it means to be informed of your legal rights?

Mr. Sims: Well, that's like being good or something?

Mr. Moore: Is that what it means to you, Isaac?

Mr. Sims: Yes, sir. (R. 136)

* * * * *

Mr. Moore: Isaac, do you know what "Constitutional rights" means?

Mr. Sims: Do you mean good or something?

Mr. Moore: Is that what it means to you, Isaac?

Mr. Sims: Yes, sir. (R. 137)

The facts of record with respect to petitioner's claim of racial discrimination in the jury selection process are set forth below in Argument II, pp. 47 to 48, *infra*.

Petitioner objected to the confessions and the testimony about them on federal constitutional grounds by a series of oral and written motions and pleas, including a pre-trial motion to suppress (R. 13), a motion to quash the signed confession and to exclude the testimony concerning it (R. 235), and motions to strike testimony (R. 212-213, 225). All the motions were overruled. An amended motion for new trial renewed the objections (R. 24-44) and was denied (R. 317). The federal claims were preserved by bill of exceptions (R. 319, 321-322), and on appeal the

Supreme Court of Georgia rejected all of petitioner's constitutional claims and held the confession was properly admitted in evidence (R. 334-343).

Petitioner's objections to the standard used to determine voluntariness under Georgia law were articulated in the amended motion for new trial (R. 43-44). His objections, based on *Jackson* v. *Denno*, 378 U.S. 368, were overruled by the Georgia Supreme Court in an opinion denouncing the holding of *Jackson* as "illogical, impracticable and utterly unsound" and expressing the hope that it would be overruled, while at the same time attempting to show that the *Jackson* holding was not applicable to this case in view of certain Georgia laws (R. 337-342).

The federal objections based on jury discrimination were also preserved throughout the proceedings below. Petitioner's motion for change of venue, first plea in abatement, and challenge to the array in the Superior Court alleged that his Fourth Amendment rights of equal protection of the laws and due process of law had been violated in that grand and petit jury panels were selected in a racially discriminatory manner (R. 3-4, 6-8, 10-11). The pleadings contended that Negroes were systematically and arbitrarily included or excluded from jury panels and that no Negro had ever served as a jury commissioner (*ibid.*). The first plea in abatement and challenge to the array also alleged that the Charlton County Tax Digest from which jurors were selected listed taxpayers separately on the basis of race (R. 4, 7-8). After hearing testimony the court overruled petitioner's objections (R. 5, 6, 8, 12, 70. 93, 95). Petitioner offered in evidence certified copies of the grand and traverse jury lists from 1954 to 1963 (R. 254-98). The trial court ruled them inadmissible (R. 72-73, 147). Petitioner's bill of exceptions in the Supreme Court of Georgia assigned these various rulings on the jury discrimination claim as error (R. 319-322).

The Supreme Court of Georgia affirmed, rejecting petitioner's arguments on the merits (R. 330-332).

Petitioner offered to prove by certified copies of the traverse and grand jury lists of 1954 to 1963 the pattern in which Negroes had been systematically and arbitrarily included or excluded from jury lists (R. 70-73). These offers of proof were ruled inadmissible (R. 147) and this ruling was upheld by the Georgia Supreme Court (R. 332-33).

Summary of Argument

I.

The use at trial of confessions obtained from petitioner while in police custody violated his right against deprivation of life without due process of law, for several reasons.

A. The issue of voluntariness of the confessions was submitted to the trial jury without the prior judicial screening required by *Jackson* v. *Denno*, 378 U.S. 368. The Supreme Court of Georgia conceded as much, but took the view that *Jackson* was inapplicable in Georgia by reason of several aspects of Georgia confession practice—the requirement that confessions be corroborated, the requirement that they be shown voluntary as a condition of admissibility, and the trial court's power to set aside an unjust verdict of conviction—said to provide safeguards not provided by the New York practice condemned in *Jackson*. However, each of these practices has its exact analogue in New York law and each is so obviously general, if not universal, American practice in confession cases that it blinks reality to suppose the Court in *Jackson* imagined that any other practices would obtain in the trials which *Jackson* was plainly designed to govern. Georgia

has here merely evaded, not distinguished, *Jackson;* and its evasion should not be countenanced by the Court.

B. A standard was used to determine the voluntariness, hence the admissibility, of petitioner's confessions which was not the standard imposed by the Fourteenth Amendment. Inquiry respecting voluntariness below was confined to the issues (delimited by Georgia statute) whether petitioner's statements were induced by promises or threats. But under the Due Process Clause, any cumulation of circumstances which saps the will of an accused and compels him to a confession not freely self-determined renders the confession inadmissible even though no threats or promises have been made. The narrow view taken by the Georgia courts of the constitutional obligation of a State to protect criminal defendants against the use of involuntary confessions thus runs afoul of the holding in *Rogers* v. *Richmond,* 365 U.S. 534, and compels reversal of petitioner's conviction.

C. Petitioner, an ignorant and illiterate Negro taken into custody for the capital offense of rape of a white woman, was subjected while surrounded by police to physical brutality requiring hospital treatment. A short time thereafter, still surrounded by police, without the opportunity to see a friend or lawyer, and without effective warning of his rights in view of his limited mentality, he confessed the rape. Later, after he had been charged by warrant, again surrounded by police and without having seen a friend or received effective caution, he was asked to reaffirm his confession and did so. On these uncontested facts, his confessions were coerced as a matter of law. Any confession made in police custody shortly after a prisoner's blood has been spilled is inadmissible consistent with due process of law. When to the physical brutality

suffered by petitioner there is added his mental inadequacy, his isolation in police confinement, and the terrorizing circumstance of his charge for rape of a white woman, the totality of circumstances plainly makes out duress within the prior forced-confession holdings of this Court.

D. The same circumstances firmly establish that petitioner was denied the right to counsel given by *Escobedo* v. *Illinois,* 378 U.S. 478. While petitioner did not request counsel, *Escobedo* and cases decided prior to it make plain that a request is not the invariable condition of the protective right to counsel which *Escobedo* assures, and that in some cases fundamental fairness precludes use of a confession taken from an ignorant and uncounseled state criminal defendant. Petitioner's is such a case. His incapacity to understand or protect his rights in the fearful surroundings of his confinement by the police render the taking of his initial confessions fundamentally unfair. And the police stratagem of securing his reaffirmation after he had been charged violates the command of the Sixth Amendment, as incorporated in the Fourteenth, that a criminal "accused" be provided a lawyer once the proceedings against him have progressed to the post-investigative stage.

II.

A. Georgia courts refused to permit petitioner to make a full record on his claim that Negroes had been arbitrarily barred from and limited in serving on Charlton County grand and petit juries. In thus thwarting petitioner's rights, the Georgia courts were in clear violation of the principle announced in *Coleman* v. *Alabama,* 377 U.S. 129, and *Carter* v. *Texas,* 177 U.S. 442. In jury discrimination cases, this Court has long relied upon records covering a number of years in order to appraise present conduct in the context of past action.

B. The Charlton County jury commissioners' use of segregated tax digests, pursuant to Ga. Code §§59-106 and 92-6307, violates petitioner's Fourteenth Amendment rights to grand and petit juries selected without regard to race. *Hamm* v. *Virginia State Board of Elections,* 230 F. Supp. 156 (E.D. Va. 1964), *aff'd sub nom. Tancil* v. *Woolls,* 379 U.S. 19, deprives the State of any justification for maintaining racially separate tax lists, and Georgia's process of selecting jurors from those lists, together with Charlton County's local practice of having the names of white taxpayers on white paper and Negroes on yellow paper, violates the rule of *Avery* v. *Georgia,* 345 U.S. 559. Ga. Code Ann. §59-106, specifying that jurors shall be chosen on the basis of uprightness and intelligence, requires the jury commissioners to employ vague, subjective criteria and gives them a discretion in which the discriminatory opportunities provided by the segregated digests create an unconstitutional probability of racial exclusion. Cf. *United States* v. *Louisiana,* 225 F. Supp. 353, 396-97, *aff'd,* 380 U.S. 145.

C. Notwithstanding the Georgia courts refused to permit petitioner to make a full record on his jury discrimination claim, the facts shown—that only about 5% of the jury list, from which his grand and petit juries were selected, were identified as Negroes although Negroes comprised about 20% of the tax digest—made out a prima facie case of racial discrimination. In support of this claim, petitioner relies upon statistical computations which show a high degree of improbability that Charlton County juries were selected without regard to race in October, 1964. A gross disparity between the number of Negroes available for jury service and those actually chosen appears, and suffices to make the showing of improbability of color-blind selection required by the jury discrimination cases

generally, e.g., *Smith* v. *Texas,* 311 U.S. 128, 131; *Hill* v. *Texas,* 316 U.S. 400, 404; *Eubanks* v. *Louisiana,* 356 U.S. 584, 587. The instant case is controlled by *Avery* v. *Georgia,* 345 U.S. 559, where the Court, on a record quite similar to petitioner's regarding the jury selection process, held that a prima facie case of racial discrimination had been established. The probability that the selection process was fairly used in *Avery* is much greater than the probability that the process was fairly used in the instant case.

ARGUMENT

I.

Petitioner's Constitutional Rights Were Violated by the Use at His Trial of Confessions Which (A) Were Not Reliably Determined to Be Voluntary, in Violation of *Jackson* v. *Denno,* 378 U.S. 368; (B) Were Judged by Standards of Voluntariness That Were Not in Accord With Constitutional Requirements; (C) Were Obtained in Inherently Coercive Circumstances Following the Physical Brutalization of Petitioner While in Custody; and (D) Were Obtained in Violation of Petitioner's Sixth Amendment Right to the Assistance of Counsel.

Introduction

At petitioner's trial the State introduced testimony concerning an alleged oral confession by petitioner Isaac Sims to Deputy Sheriff Jones (R. 210), and a written confession signed by Sims purporting to give the details of the crime (R. 226-27). Both the alleged oral confession (which Sims denied making) and the signed statement were obtained April 13, 1963, while petitioner was in custody in the Ware County Jail, as the sole suspect in a capital felony. The prosecution also introduced testimony of a

state investigator that on the afternoon of April 15, 1963, he read the written confession to Sims who said it was true (R. 238). Sims stated at trial that he did not understand what he was doing when he signed the confession and that he was innocent of the crime (R. 141, 248).

We urge that Sims' rights under the Constitution were violated by the use against him of these confessions, for several distinct reasons grounded on decisions of this Court decided prior to his trial, October 7, 1964 (R. 148, 249). We submit first, that the procedure by which the trial judge and jury determined the admissibility of petitioner's statements violated the due process requirements of *Jackson* v. *Denno,* 378 U.S. 368. Second, we urge that the standards used to determine voluntariness were constitutionally deficient under *Rogers* v. *Richmond,* 365 U.S. 534, and *Wan* v. *United States,* 266 U.S. 1. Third, we argue that the physical brutality and coercive circumstances surrounding the confessions prohibit their use under *Fikes* v. *Alabama,* 352 U.S. 191, and similar cases. Fourth, we argue that use of the confessions violated petitioner's Sixth Amendment right to counsel under the principle of *Escobedo* v. *Illinois,* 378 U.S. 478, and other decisions of this Court.

A. *The Decision Below Is in Plain Conflict With Jackson v. Denno, 378 U.S. 368*

The decision below is a frontal attack on the fundamental premise of this Court's rulings from *Cohens* v. *Virginia,* 6 Wheat. (19 U.S.) 264, through *Cooper* v. *Aaron,* 358 U.S. 1, to *Henry* v. *City of Rock Hill,* 376 U.S. 776, that under the Supremacy Clause, "the federal judiciary is supreme in the exposition of the law of the Constitution" (*Cooper* v. *Aaron,* 358 U.S. at 18). On June 22, 1964, this Court decided *Jackson* v. *Denno,* 378 U.S. 368, holding

that the Constitution forbids a state court procedure leaving the determination of the voluntariness of a confession to the same jury which is charged with deciding simultaneously the issue of guilt or innocence. The Court held that such a procedure "did not afford a reliable determination of the voluntariness of the confession offered in evidence at the trial, did not adequately protect . . . [the] right to be free of a conviction based upon a coerced confession and therefore . . . [violated] the Due Process Clause of the Fourteenth Amendment" (378 U.S. at 377).

Notwithstanding that petitioner was tried and convicted in October 1964, almost four months after *Jackson* v. *Denno,* and that decision was brought to the attention of the Georgia trial and appellate courts, Georgia has adhered to its settled practice in plain violation of *Jackson* v. *Denno.* To be sure, the Georgia Supreme Court's opinion below makes a bow in the direction of the Supremacy Clause ("Did we think that the Jackson case applied to this case, we would unhesitatingly follow it despite our firm conviction that it is illogical, impractical, and utterly unsound"; R. 337), and attempts to distinguish *Jackson* v. *Denno* on grounds we shall examine below. But the primary emphasis of the opinion is an open denunciation of this Court's decision and an express call for it to be overruled.

The court below decried "the unusual implication of Jackson"; deplored the "strange speculation as to how jurors might violate their oaths . . . all of which was pure imagination without a scintilla of fact or law to support it"; asserted it was based on "unfounded speculation"; said the "decision is so shocking . . . every judge has a duty to speak out loudly against it"; and voiced dismay over the "new and strange rule with no basis of law but established by a majority of one of the Supreme Court"

(R. 339-41). Indeed, that court saw the *Jackson* case as one "shaking the foundations of orderly judicial trials which can only be followed by chaos in the trial courts of America" (R. 341), and expresses the hope that this Court will "after more mature consideration overrule *Jackson* v. *Denno*" (R. 341). Such vehemence was not merely academic exhortation. Repudiation of *Jackson* is the only ground on which the procedures employed in petitioner's case could be sustained.

Nothing in the opinion below suggests that Georgia procedure affords what *Jackson* v. *Denno* requires: a system for determining the voluntariness of a confession on the facts and law prior to its submission to the jury which decides the question of guilt or innocence. On the contrary, consistent with prior Georgia precedents, the trial court submitted the issue of voluntariness to the trial jury for decision (see charge to jury at R. 312). The trial jury was left to resolve the conflicting testimony about whether physical brutality was used against petitioner by Dr. Jackson in the presence of a group of police officers at the same time it was considering the issue of guilt on all the evidence, including the disputed confessions. The function of the trial judge, under settled Georgia procedure, was merely to determine whether the State made out a *prima facie* case that a confession was voluntary. The State can establish such a *prima facie* case under Georgia law merely by its witness's assertion during preliminary examination that (in the words of Georgia Code §38-411) a confession was "made voluntarily, without being induced by another, by the slightest hope of benefit or remotest fear of injury." *Downs* v. *State*, 208 Ga. 619, 621, 68 S.E. 2d 568, 569-70 (1952); *Garrett* v. *State*, 203 Ga. 756, 762-63, 48 S.E.2d 377, 382 (1948); *Coker* v. *State*, 199 Ga. 20, 23-25, 33 S.E.2d 171, 173-74 (1945); *Bryant* v. *State*, 191 Ga. 686,

710-11, 13 S.E.2d 820, 836-37 (1941). Once the state makes this *"prima facie"* showing it is "for the jury to decide on conflicting evidence whether [a confession] . . . was voluntary." *Downs* v. *State, supra,* 68 S.E.2d at 570. The trial judge overruled Sims' motion to suppress the confession without any explanation or elaboration of his ruling and without any indication that he had attempted to resolve the conflicting testimony presented to him (R. 147). It is significant that during the hearing, out of the presence of the jury, Sims' testimony that he was beaten and pulled by the "privates" while in custody in Dr. Jackson's office was entirely unrebutted, Dr. Jackson's partial denials coming only in testimony to the jury after the confessions ruled admissible.

All of the vices of the procedure which this Court thought sufficient in *Jackson* to require it to overrule *Stein* v. *New York,* 346 U.S. 156, are present here. The trial court's unexplained overruling of petitioner's challenge to the confessions in no way resolved the conflict between petitioner's testimony that he was questioned by Sheriff Lee and Sheriff Lee's denials, nor did it determine whether credence was to be given petitioner's then undisputed testimony that he was beaten by Dr. Jackson in the presence of armed peace officers. The trial court made no findings concerning the weight to be given the testimony that petitioner was "scolded" in the sheriff's office (R. 139), or the circumstances that the written statement contained manufactured statements of voluntariness (R. 101, 103-104). Similarly, it is impossible to know what the jury decided on the question of voluntariness. Here, as in *Jackson* v. *Denno* (*supra,* 378 U.S. 379-80):

> It is impossible to discover whether the jury found the confession voluntary and relied upon it, or involuntary and supposedly ignored it. Nor is there any

indication of how the jury resolved disputes in the evidence concerning the critical facts underlying the coercion issue. Indeed, there is nothing to show that these matters were resolved at all, one way or the other.

Thus, the ruling below is at war with the requirement that the "procedures must . . . be fully adequate to insure a reliable and clear-cut determination of the voluntariness of the confession, including the resolution of disputed facts upon which the voluntariness issue may depend." *Jackson* v. *Denno*, 378 U.S. 368, 391.

The court below does not deny that Georgia practice makes the trial jury the only trier of fact on the issue of "admissibility" when a confession is challenged as involuntary. It, rather, suggests three principal reasons,[2] why it believes *Jackson* v. *Denno* is distinguishable from this case (R. 337-338):

1) That the *Jackson* opinion did not consider Georgia Code §38-420 "which provides that a confession can not rest upon a confession alone, but the confession must be corroborated";

2) that the *Jackson* opinion did not consider Georgia Code §38-411 "requiring as an indispensable foundation to the introduction of an alleged confession a showing that it was freely and voluntarily made and that it was not induced by another by the slightest fear of punishment nor the remotest hope of reward";

[2] The court below also suggested that *Jackson* did not cover this case because "there was no evidence to make an issue of voluntariness" (R. 339). To the contrary, we shall submit at pp. 26 to 43, *infra*, that the uncontradicted evidence establishes coercion as a matter of law. However this may be, the assertion that there was "no evidence" of coercion is entirely untenable. See *ibid.*

3) that the *Jackson* opinion did not consider "Georgia law investing the trial judge with unquestionable power to review the case after conviction, and to set the verdict aside if he is not satisfied with it."

The general answer to these attempted distinctions is that none of the rules of Georgia law which are cited are rules which are different from the New York law considered in *Jackson*. Indeed, all three rules are principles of such general applicability that there is no reason at all to believe that this Court did not consider them or ever thought any other principles applied when it decided *Jackson* v. *Denno, supra.*

The Georgia Supreme Court's first point—emphasizing that confessions must be corroborated—is directly paralleled in New York law. See N.Y. Code Crim. Proc., §395 requiring "additional proof" other than a confession before conviction. The rule that confessions must be corroborated is, of course, universal in American law. See 7 Wigmore, Evidence §2071 (3d ed. 1940). It has been stated frequently in this Court's opinions in federal cases. *Opper* v. *United States,* 348 U.S. 84; *Smith* v. *United States,* 348 U.S. 147; *Wong Sun* v. *United States,* 371 U.S. 471, 488-489. One can hardly suppose that the Court forgot it or did not know of it in deciding *Jackson* v. *Denno, supra.*

Of course, even if the Georgia rule on corroboration of confessions was unique, it would not justify rejection of *Jackson* v. *Denno.* The emphasis on the corroboration of the confession is merely another way of urging that it is reliable or truthful. But *Rogers* v. *Richmond,* 365 U.S. 534, makes it plain that the Constitution requires a determination that a confession is *voluntary* and that the *reliability* of the confession is not properly considered in determining voluntariness.

The Georgia Court's second point merely focuses on the verbiage of Georgia Code §38-411 and is largely rhetoric. Of course, Georgia law requires that a foundation be laid for a confession. But so does New York's law as this Court observed in *Jackson* v. *Denno*, 378 U.S. 368, 377-378, and *Stein* v. *New York*, 346 U.S. 156. The Georgia rule is like the New York rule described in *Jackson* v. *Denno*, 378 U.S. at 377-378:

> Under the New York rule, the trial judge must make a preliminary determination regarding a confession offered by the prosecution and exclude it if in no circumstances could the confession be deemed voluntary. But if the evidence presents a fair question as to its voluntariness, as where certain facts bearing on the issue are in dispute or where reasonable men could differ over the inferences to be drawn from undisputed facts, the judge "must receive the confession and leave to the jury, under proper instructions, the ultimate determination of its voluntary character and also its truthfulness." Stein v. New York, 346 U.S. 156, 172, 97 L.ed. 1522, 1536, 73 S. Ct. 1077. If an issue of coercion is presented, the judge may not resolve conflicting evidence or arrive at his independent appraisal of the voluntariness of the confession, one way or the other. These matters he must leave to the jury.

And the opinion below nowhere hints at a disavowal of the line of prior Georgia decisions interpreting §38-411 to require only a decision by the judge whether there was a prima facie showing of voluntariness with all factual disputes being left to the jury. *Downs* v. *State*, 208 Ga. 619, 621, 68 S.E.2d 568, 569-570 (1952); *Garrett* v. *State*, 203 Ga. 756, 762-763, 48 S.E.2d 377, 382 (1948); *Coker* v. *State*, 199 Ga. 20, 23-25, 33 S.E.2d 171, 173-174 (1945); *Bryant* v. *State*, 191 Ga. 686, 710-711, 13 S.E.2d 820, 836-837 (1941).

Thus, the court's second point plainly begs the question in its assertion that Georgia law requires that confessions be voluntary. The question decided in *Jackson* v. *Denno, supra,* is *who* must determine that confessions are voluntary. Georgia has not shown that its procedure in this regard differs from that condemned in *Jackson.*

The Georgia court's third point is that the trial judge can grant a new trial if he is not satisfied with or does not approve the verdict. Again, New York has the same rule, and this Court was aware of it as indicated by *Stein* v. *New York,* 346 U.S. 156, 174, footnote 18. This Court described the New York trial judge's powers in *Stein* saying that he can "set aside a verdict if he thinks the evidence does not warrant it," citing N. Y. Code Crim. Proc. §465. Indeed, in a New York capital case such as *Jackson* the state Court of Appeals also has statutory power to order a new trial "if the conviction is found to be 'against the weight of evidence,' or if the court is satisfied for any reason whatever 'that justice requires a new trial'" (*Stein* v. *New York,* 346 U.S. 156, 171-172). See *People* v. *Caruso,* 246 N.Y. 437, 159 N.E. 390 (1927). With respect to the trial judge's powers to order a new trial, the notion that a trial judge may act as a "thirteenth juror" is general in our law and not at all peculiar to Georgia. See, for example, *Brodie* v. *United States,* 295 F.2d 157, 160 (D.C. Cir. 1961); *Davis* v. *State,* 245 Ala. 589, 18 So.2d 282 (1944); *People* v. *Megladdery,* 40 Cal. App. 748, 106 P.2d 84 (1940); *Commonwealth* v. *Coyle,* 190 Pa. Super. 509, 154 A.2d 412 (1959); 24 C.J.S., Criminal Law, §1452 (1961); Barron & Holtzoff, Federal Practice & Procedure, §2281 (Rules ed. 1958).

We submit that the Court should reject the invitation in the opinion below (R. 341) to overrule *Jackson* v. *Denno,* and should reaffirm that the decisions of the nation's highest Court interpreting the Constitution are as binding in

Georgia as they are in the other States. There is no reason why Georgia cannot conform to *Jackson*, as the other States have done.[3] The State's brief in opposition to certiorari in this case has understandably made no argument on the *Jackson* v. *Denno* question.

B. *The Standards Applied Below to Determine Voluntariness Were Insufficient to Satisfy the Constitutional Requirements*

In his Amended Motion for New Trial petitioner set forth constitutional objections to the charge to the jury on the issue of voluntariness (R. 43-44). The charge on this issue (R. 312) did little more than reiterate the language of Ga. Code §38-411 that confessions must be voluntary "without being induced by another, by the slightest hope of benefit or remotest fear of injury." The motion asserted that the charge violated constitutional requirements in that it was "wholly inadequate to have insured a reliable and precise determination of the voluntariness of the alleged confession" and that the "instructions leave it entirely to the impressionistic determination of the jury whether a voluntary confession was in point of fact made without delineating any constitutionally adequate standards or definitive criteria upon which and by which the jury could resolve said issue" (R. 43-44).

Whatever was the scope of the trial judge's function in appraising the issue (we have submitted in part A above

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[3] The following jurisdictions have altered their rules to conform to *Jackson* v. *Denno*, 378 U.S. 368: *State* v. *Costello*, 97 Ariz. 220, 399 P.2d 119 (1965); *People* v. *Walker*, 374 Mich. 331, 132 N.W.2d 87 (1965); *State* v. *Brewton*, 395 P.2d 874 (Ore. 1964); *Commonwealth ex rel. Gaito* v. *Maroney*, 416 Pa. 199, 204 A.2d 758 (1964); *Lopez* v. *State*, 384 S.W.2d 345 (Tex. Ct. Crim. App. 1964), on remand from 378 U.S. 567; *State* v. *Burke*, 27 Wis. 244, 133 N.W.2d 753 (1965).

State law grounds barred consideration of *Jackson* on its merits in *State* v. *Taylor*, 133 N.W.2d 828 (Minn. 1965); *Marion* v. *State*, 387 S.W. 2d 56 (Tex. Ct. Crim. App. 1964).

that he did not resolve any disputed facts), it seems apparent that he did not use any different standard than the one he gave the jury. This is clear not only from the jury instruction but from the manner in which the Court repeatedly treated objections to the confessions, permitting them to go before the jury on nothing more than conclusory affirmative answers by police witnesses to questions phrased in the words of the statute (R. 211, 224-225).

Finally, the Georgia Supreme Court seems to have taken the same narrow view of the test for vountariness. Its opinion gives little evidence of an examination of the totality of the circumstances surrounding the confession. There is, for example, no mention of the physical brutality to which Sims was subjected while in custody during the investigation process. This is described in detail, *infra* at pp. 26 to 30. Nor was there any discussion of the many other factors such as Sims' mental condition, injuries, education, isolation, etc., which are delineated below at pp. 30 to 36. Rather, the court below apparently found it sufficient to resolve the issue that there was testimony that petitioner was advised of certain rights; that the Sheriff testified "that no threats or promise of hope or benefit or reward were made to induce Sims to make a statement" (R. 335); that there was thus, a "prima facie showing that the statement was freely and voluntarily made and admissible in evidence. Code §38-411" (R. 336); and that "even without this confession, the above-mentioned evidence was sufficient to support the verdict" (R. 334).

It is, we submit, clear that petitioner never had a decision of the issue of voluntariness made with reference to the appropriate constitutional standards at any level—neither by the trial judge, jury, or state appellate court. His conviction should be reversed on the authority of *Rogers* v. *Richmond*, 365 U.S. 534.

In *Rogers, supra,* the Court invalidated a conviction resting on a confession which the trial judge and the State's highest court had approved, since it was plain they both "failed to apply the standard demanded by the Due Process Clause of the Fourteenth Amendment for determining the admissibility of a confession" (365 U.S. at 540). The error of the Connecticut courts was in determining admissibility "by reference to a legal standard which took into account the circumstance of probable truth or falsity" (365 U.S. at 543).

In Isaac Sims' case, it is apparent that the State's highest court made the same error. It relied on the fact that there was other evidence corroborating the confession in considering its admissibility. Whether the other evidence of guilt was thought pertinent as assuring the confession's truth or as warranting its non-prejudicial character, this simply is not Fourteenth Amendment law. See *Payne* v. *Arkansas,* 356 U.S. 560, and authorities cited.

The Supreme Court of Georgia, moreover (and the trial court insofar as its basis of judgment can be gleaned from this record), appraised the case only in terms of the presence or absence of threats or promises—the Georgia statutory standard. Similarly, the skeletal instructions to the jurors in the words of the statute directed the jury's attention to "hope . . . or . . . fear" and wholly failed to equip the jurors to determine voluntariness in accord with federal constitutional standards requiring scrutiny of all the coercive or overbearing circumstances of the case.

This Court long ago condemned as unduly restrictive a review of confessions that was limited to determining whether they were induced by promises or threats. Mr. Justice Brandeis wrote in *Wan* v. *United States,* 266 U.S. 1, 14-15:

> The court of appeals appears to have held the prisoner's statements admissible on the ground that a confession made by one competent to act is to be deemed voluntary, as a matter of law, if it was not induced by a promise or a threat; and that here there was evidence sufficient to justify a finding of fact that these statements were not so induced. In the Federal courts, the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat. A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them. But a confession obtained by compulsion must be excluded, whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise. Bram v. United States, 168 U.S. 532.

And at least since *Chambers* v. *Florida,* 309 U.S. 227, 239, the rule of *Wan* has been the law of the Fourteenth Amendment. See also *Ward* v. *Texas,* 316 U.S. 547, 555; *Ashcraft* v. *Tennessee,* 322 U.S. 143, 154.

Petitioner has not had a determination of voluntariness in the courts below which is consistent with the constitutional standards. *Rogers* v. *Richmond,* 365 U.S. 534; *Wan* v. *United States,* 266 U.S. 1; cf. *Haynes* v. *Washington,* 373 U.S. 503, 516-517, note 11.

C. *Petitioner's Confession Was Obtained in Inherently Coercive Circumstances and After He Had Been Physically Brutalized While in Custody, and Its Use to Convict Him Violates the Due Process Clause of the Fourteenth Amendment*

1. Facts and Circumstances Surrounding the Confession

Isaac Sims was taken into custody by Sgt. George Sims and Trooper Peacock of the State Patrol at about 3:00 p.m. on April 13, 1963 (R. 184-185). On orders from Sheriff Sikes, petitioner was taken by Sgt. Sims to the medical office of Dr. Joseph M. Jackson (R. 185). He was taken directly to Dr. Jackson's office from the place where the police took him in custody (R. 184-185). It is clear that the officers took Sims to Dr. Jackson's office as a part of their investigative process, so that his clothes might be removed and examined for evidence of the crime (R. 205, 206-207).

Petitioner Sims testified very clearly that he was brutalized while in custody at Dr. Jackson's office. He gave such testimony both in the pre-trial hearing outside the presence of the jury (R. 131), and in his unsworn statement, before the jury (R. 248). Sims stated that he was in Dr. Jackson's office with seven or eight white state patrolmen. When asked what happened to him there, Sims said (R. 131):

> Well, Dr. Jackson, he knocked me down and kicked me over my eye lid and busted my eye on the right side.
>
> Q. Did anything else happen to you? A. And he grabbed me by my private and drug me on the floor.

Sims' statement before the jury was to the same effect (R. 248):

Well, they brought me over to Dr. Jackson's office and they carried me in there, about six or seven State Patrols, and Dr. Jackson beat me, and taken my clothes off, and then carried me over to the bigger hospital and stitched my eye up where they kicked me over the eye, and put me on some white clothes —white pants, but I kept my shirt I had on.

Q. While you were in Dr. Jackson's office did he drag you around the floor? A. Yes, sir.

* * * * *

Q. (By the Defendant's Attorney) What happened to you while you were in Dr. Jackson's office? A. Well, he pulled me by the privates.

When Sims testified in the pre-trial hearing he was cross-examined, but *the prosecutor never asked Sims a single question about what happened to him in Dr. Jackson's office* (R. 137-143). In addition, *the prosecutor put on no testimony at all to rebut Sims' claim* that he was beaten, kicked over the eye, and pulled by his private parts in the presence of six to eight officers.

The prosecutor never asked any witness a single question about what happened in Dr. Jackson's office. Sgt. George Sims, the officer who took petitioner to and from Dr. Jackson's office (R. 185), was never asked what happened in the office.[4] The other officers who were present were never called to testify or identified by name.[5] The prosecutor did not ask Dr. Jackson a single question (on direct or re-direct) about what happened while Sims was in his office (R. 189-197, 208).

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[4] Dr. Jackson said that he presumed that the officers in the office with Sims were the ones who brought him there (R. 202).

[5] The exception was Trooper Peacock who was mentioned by Sgt. Sims (R. 184) but did not testify.

Defense counsel did cross-examine Dr. Jackson about the events in his office (R. 202-207). Certain aspects of Sims' testimony were confirmed by Dr. Jackson, who said:

(a) that Sims was brought to his office (R. 202);

(b) that police officers and troopers were there and he was not alone with the defendant (R. 202);

(c) that Sims' clothes were removed (R. 202);

(d) that he (Dr. Jackson) "assisted him slightly" and gave him "a little help" in removing his clothes, including his pants and his underpants (R. 202-203, 206-207);

(e) that Sims was down on the floor while in the office (R. 203, 204);

(f) that by the time Sims left the office he "had a place over his eye that required some treatment" (R. 204);[6]

(g) that when Sims left "he was taken over to the hospital and the place was treated that I told you about" (R. 207);

(h) that at the hospital Dr. Aztui put four stitches in the injury over Sims' eye (R. 207).

Dr. Jackson's explanation of what happened to petitioner in his office was highly evasive and partly in the form of denials of knowledge about what happened to Sims. Asked whether the State Patrolman "put the place over his eye," Jackson answered, "I don't know who put it there" (R. 204). When asked if the officers were beating Sims he said:

A. You'll have to ask the officers.

Q. I'm asking you, Dr. Jackson. I'm asking you

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[6] A state investigator observed the injury on his face two days later (R. 242).

whether or not the officers were beating the defendant. A. I will say that I wasn't there all the time (R. 204).

Referring to the "place" over Sims' eye, Jackson was asked:

> Q. He didn't have it over his eye when he came into your office, did he? A. I didn't see him till after he got in.
>
> Q. And when you first saw him in your office he didn't have it? A. I couldn't see it. He was sort of slumped over, sort of falling around, like. Most anything could have happened to him (R. 204).

Dr. Jackson denied that he knocked Sims down (R. 204) or that he kicked him (R. 205). But when asked whether Sims was kicked he said only: "I don't know that he was" (R. 205). Earlier, Dr. Jackson was asked whether Sims was knocked down and he said: "I don't know whether he was knocked down or fell down" (R. 203).

Dr. Jackson was asked:

> Q. Did you find him down on the floor? A. He sort of fell in the floor.
>
> Q. He just sort of fell? Where were you standing at the time he sort of fell? A. I was standing on my feet.
>
> Q. Were you standing near him? A. Fairly close.
>
> Q. Were you standing as close as I am to you, or closer? A. Probably a little closer.
>
> Q. Where you could touch him? A. I think he could touch me.
>
> Q. And you could touch him? Right? A. Yes. (R. 204).

Thus, Dr. Jackson's testimony was that Sims was close enough to touch him when he fell on the floor, but Dr. Jackson did not know "whether he was knocked down or fell down" (R. 203). Later Jackson said Sims was on the floor when he entered the room (R. 205). In Jackson's own words, "Most anything could have happened to him" (R. 204). Despite all this, throughout the entire trial the prosecutor avoided any inquiry into what happened to Sims in Dr. Jackson's office. Although Dr. Jackson denied on cross that he knocked Sims down or kicked him, the prosecution asked no questions about this and called none of the policemen to corroborate the doctor's denial. Plainly Sims was injured while in custody. There was no suggestion that he resisted arrest or anything of that nature.

Moreover, *the doctor gave no testimony denying Sims' claim that he was pulled by his private parts and dragged on the floor.* There was no rebuttal or denial of this testimony at all and it stands uncontradicted and uncontested in the record. The language of the Court in *Haynes* v. *Washington,* 373 U.S. 503, is pertinent in appraising the State's failure to rebut Sims' claim of brutality:

> We cannot but attribute significance to the failure of the State, after listening to the petitioner's direct and explicit testimony, to attempt to contradict that crucial evidence; this testimonial void is the more meaningful in light of the availability and willing cooperation of the policemen who, if honestly able to do so, could have readily denied the defendant's claims. (373 U.S. at 510.)

In addition to the evidence of physical brutality, there are, of course, a variety of other facts to be considered in appraising the totality of circumstances surrounding the confessions. They reveal that Sims was bewildered, help-

less, alone, hungry, in pain and in fear when he signed his written statement.

Isaac Sims is an indigent, ignorant, illiterate Negro, who cannot read and can write only his name (R. 130). He has spent most of his life in Charlton County in the southeast part of Georgia (R. 129). Both of his parents are dead; his closest relatives in Charlton County were two sisters (R. 128). At the time of his arrest he was in his twenties; the record leaves his exact age unclear.[7] Sims was unable to tell what year he was born (R. 128). He went to the third grade in school, quitting when he was "seventeen or eighteen" (R. 130). He testified, "Well, I didn't go [to school] too much on account of I had to help my father work, and he taken me out of school" (R. 129). He worked as a pulpwood worker, earning forty to sixty dollars a week. He is indigent, had appointed counsel at his first trial, and has proceeded in forma pauperis throughout the case.

The record reveals his limited mental capacity in many instances. He did not know the year he was born; nor could he state when his father died (R. 128). He was totally unable to explain words and phrases such as "normal and ordinary" (R. 144), "legal rights" (R. 136), "constitutional rights" (R. 137), "freely and voluntarily" (R. 136), "the right to have a lawyer" (R. 137), or that "a statement can be used against you in court" (R. 136). Sims "stutters" when he speaks (R. 122).

Sims was a Negro charged with the rape of a white woman—a capital felony in Georgia. The prosecutrix was the unmarried daughter of the local postmaster (R. 61). At about 2:00 or 2:30 p.m. Sims was taken into custody and held at gunpoint some five miles from the scene of the

[7] The confession stated that he was 27 on the day of arrest in April 1963 (R. 226); he testified that he was 29 at the trial in October 1964 (R. 247), but his birthdate was February 5 (R. 128).

crime by two Negro men who had been ordered by their boss, a local white man, to look for any "stray man" (R. 169, 175-176). He was then taken by this white man, Noah Stokes, accompanied by several other men, to state troopers who carried him to Dr. Jackson's office where Sims was brutalized as we have described above. After Sims was treated at the hospital for his eye injury, the police took him to the Ware County Jail in Waycross, some thirty or thirty-five miles away from Folkston and located outside the county where the crime occurred, for "safe keeping" (R. 233-234, 242).

The police testimony is that at about 6:30 p.m., while confined in a cell at the Ware County Jail, Sims orally admitted "raping" or "molesting" a white woman in Folkston in a conversation with Deputy Sheriff Dudley Jones whom Sims had known for more than a dozen years previously[8] (R. 113, 209-210, 214-216). Jones did not testify that he gave Sims any warnings prior to eliciting this admission, either as to Sims' right to remain silent, that his statement would be used against him, or as to his right to counsel. Jones testified that Sims then agreed when asked if he wanted to make a statement to the sheriff (R. 113, 210).[9]

Sims remained alone in a cell until about 10:00 or 10:30 that evening when he was taken to the "interview room" in the jail (R. 210, 223). Sims had not been fed since he was taken into custody some 8 hours earlier and he was still in pain from the injury sustained in Dr. Jackson's office.[10] There were four white officers in the "interview

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[8] Sims denied making this oral confession (R. 134, 138-139).

[9] Sims also denied this (R. 133).

[10] Sims testified at R. 135-136:

A. Well, I felt pretty rough for about two or three weeks, more on my private than I did on my face.

Q. When you said you felt pretty rough, what did you mean, Isaac?

A. Well, I was paining a right smart.

room" with Sims: they were the Sheriff and Deputy Sheriff of Ware County, the Chief of Police, and the Constable.[11] Sims testified that he was "scared" (R. 143). As to his treatment, he said, "they didn't beat me, but they kind of scolded me a little" (R. 139). None of Sims' testimony in these regards was rebutted.

Since his arrest, petitioner had not been in touch with any relative, friend or attorney. He had not been offered the use of a phone (R. 222) and he had not been taken before a magistrate in accordance with Georgia law (R. 235-236).[12] He was in jail in the adjoining county some 30 or 35 miles from Folkston (R. 67, 242).

Q. Were you paining a right smart when you were in the room with Sheriff Lee and Deputy Sheriff Jones? A. Yes, sir.

Q. Now, after you were taken into custody up until the time you were taken upstairs had you been given anything to eat? A. No, sir.

Q. Were you hungry? A. Yes, sir; I could have eat.

[11] The Police Chief and Constable were not called as witnesses.

[12] Georgia law specifically required bringing petitioner promptly before a magistrate where, as here, the arrest was made without a warrant:

"*Duty of person arresting without warrant.*—In every case of an arrest without a warrant the person arresting shall without delay convey the offender before the most convenient officer authorized to receive an affidavit and issue a warrant. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose and any person who is not conveyed before such officer within 48 hours shall be released." Ga. Code §27-212 (1933).

Even if the arresting officers had a warrant, they were similarly obligated:

"*Officer may make arrest in any county. Duty to carry prisoner to county in which offense committed.*—An arresting officer may arrest any person charged with crime, under a warrant issued by a judicial officer, in any county, without regard to the residence of said arresting officer; and it is his duty to carry the accused, with the warrant under which he was arrested, to the county in which the offense is alleged to have been committed, for examination before any judicial officer of that county.

"The county where the alleged offense is committed shall pay the expenses of the arresting officer in carrying the prisoner to that county; and the officer may hold or imprison the defendant long enough to enable him to get ready to carry the prisoner off. (Acts 1865-6, pp. 38, 39; 1895, p. 34.)" Ga. Code §27-209 (1933).

The record does not make it clear how long Sims was in the interview room before the confession was given and signed,[13] or to what extent, if any, Sims was interrogated. When asked whether he questioned Sims, Sheriff Lee said, "I don't think so," then, "I could have," and finally, "I just don't recall right now" (R. 105). Sims said he was questioned by Lee (R. 135, 140), and also that he was "scolded" (R. 139).

Deputy Sheriff Jones wrote out the confession and read it to Sims. He admittedly wrote out some matter which Sims did not say. The Sheriff, and his deputy who actually wrote the confession, testified petitioner did not say that the statement had been made freely and voluntarily or that he had been informed of his legal rights, although the written statement includes those words. In fact, petitioner does not even know the meaning of "freely and voluntarily" (R. 136). Every word in the confession asserting its voluntariness and its having been made with knowledge of the legal consequences was inserted not by petitioner but by his inquisitors. The deputy sheriff crossed out several words in the original statement, including the words, "I

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[13] Sheriff Lee testified (R. 104):

Q. Do you know what time on the evening of April 13, 1963, that you started taking this statement? A. Well, the statement was short. It wouldn't have taken but just a few minutes.

Q. How many minutes? A. Oh, ten or fifteen minutes.

Q. Did you start taking the statement at 10:30 or did you conclude it at 10:30? A. Well, I wouldn't say we finished at 10:30 or started at 10:30. It was approximately 10.

Q. So you questioned him from 10 to 10:30? A. How is that?

Q. You questioned him from 10 to 10:30? A. I didn't say that.

Q. You started at 10? A. I didn't say that.

Q. You started at 10:30, then? A. I said that we could have finished at 10:30 or started at 10:30. I don't recall.

Deputy Sheriff Jones said that Sims was brought down at 10:30 (R. 113); that it took him approximately twenty to thirty minutes to write down Sims' statement (R. 119), and five or six minutes to read it to him (R. 121-122).

have read" when it was learned the petitioner could not read (R. 229).

The sheriff testified that he told petitioner that before he made a statement he was entitled to an attorney and that petitioner said he did not want one (R. 99-100, 224). The sheriff also said that he told petitioner "that the statement he was going to give could be used against him in court" (R. 99-100, 225). On each of the occasions at trial when Sheriff Lee recounted his warning to Sims, he failed to mention that he advised Sims of his right to remain silent (R. 99-100, 224-225). However, a sentence at the end of the confession written by the deputy recites: "I have been informed of my legal rights by Sheriff Robert E. Lee that I did not have to make any statement whatsoever, knowing that this statement can be used against me in a court of law" (R. 227). No one offered Sims the use of a phone or advised him that a lawyer would be appointed if he could not afford one.

On Monday afternoon, April 15, 1963, Agent F. F. Cornelius of the Georgia Bureau of Investigation brought Sims in handcuffs from the jail in Waycross back to the sheriff's office Folkston (R. 237, 241). Cornelius questioned Sims in the sheriff's office in the presence of five other police officers[14] (R. 239-240). Cornelius read the statement Sims had signed on Saturday night to Sims, asked him if it was true, and Sims said, "Yes, sir" (R. 238). Cornelius did not caution Sims that he was not required to answer and could remain silent, or otherwise advise him of his rights (R. 241). Sims apparently still had no attorney and had not seen any friends or relatives during the period since his arrest (R. 241-242). He was first taken before a magistrate on April 15th (R. 66). The record is silent on whether the question-

[14] None of these five officers testified at the trial.

ing by Cornelius came before or after that proceeding. But a warrant charging Sims with the crime had been issued at some time before he was brought back to Folkston and made the admissions to Cornelius (R. 239).

2. The Confessions Were Obtained in Inherently Coercive Circumstances and Their Use Violated the Due Process Clause

The Court has consistently held that the voluntariness of a confession must be determined in the context of all the surrounding circumstances as they appear from the Court's independent examination of the uncontested facts on the entire record. Examination of the record in this case makes it plain that each of the confessions allegedly given by Sims to the law authorities while he was in custody were given in inherently coercive circumstances and were not voluntary.

The recitation of the facts above should demonstrate conclusively that *Fikes* v. *Alabama,* 352 U.S. 191, requires reversal of the conviction. The similarities between this case and *Fikes* are numerous and significant. In both cases the petitioner was a Negro in his mid-twenties charged with a sexual assault upon the daughter of a local public official in a southern community. Both Fikes and Sims had attained only third grade educations when they quit school in their late teens. Sims, like Fikes, is of limited mentality. In this case, as in *Fikes,* the petitioner was first arrested by civilians; was not arraigned or taken before a magistrate prior to his confession; was carried to a jail far from the scene of the crime; and was allegedly advised of some of his legal rights by a law enforcement officer before confessing. Sims saw no friend, relative or counsel; Fikes saw his employer, but his father and a lawyer were denied access to him. The *Fikes* record contained "no evidence of physical brutality" (357 U.S. at 197). But Isaac Sims made a strong and largely uncontested showing that he was

brutalized and suffered injury requiring medical treatment while in the custody of officers who were engaged in an investigative process.

The *Fikes* case involved a longer period of custody and questioning before the confession, viz., five days in *Fikes* as against 7 or 8 hours in this case. But even a short period of time may be sufficient to overpower a suspect's will (*Haley* v. *Ohio,* 332 U.S. 596), and the denial of food to petitioner during his confinement bears directly upon the confession's alleged voluntariness (*Watts* v. *Indiana,* 338 U.S. 49, 53; *Payne* v. *Arkansas,* 356 U.S. 560, 567), as does the stripping of petitioner in Dr. Jackson's office (*Malinski* v. *New York,* 324 U.S. 401). The physical beating suffered by Sims is sufficient to counterbalance the comparatively short period of questioning revealed by the record. As Mr. Justice Frankfurter (joined by Mr. Justice Brennan) said concurring in *Fikes* v. *Alabama,* 352 U.S. 191, 198:

> It is, I assume, common ground that if this record had disclosed an admission by the police of one truncheon blow on the head of petitioner a confession following such a blow would be inadmissible because of the Due Process Clause.

Sims has more than met the requirement that he show "one blow." It is not disputed that while engaged in their investigation the police took Sims to Dr. Jackson's office where he sustained injuries requiring medical treatment (four stitches over the eye), which he claimed were received from blows and kicks in the presence of the police, an episode the prosecution has never troubled to deny or rebut. We submit that it is plain that the prosecutor never asked a question or put on a witness to deny Sims' version of this incident because he could not honestly do so (cf. *Haynes* v. *Washington,* 373 U.S. 503, 510).

The element of violence in this case makes it as strong, if not stronger than *Fikes, supra,* and similar cases where the Court has viewed the circumstances as sufficiently coercive to strike down convictions. See, particularly, *Haynes* v. *Washington,* 373 U.S. 503; *Culombe* v. *Connecticut,* 367 U.S. 568; *Turner* v. *Pennsylvania,* 338 U.S. 62; *Johnson* v. *Pennsylvania,* 340 U.S. 881 (*per curiam;* facts stated in *Culombe* v. *Connecticut,* 367 U.S. 568, 628).

And, of course, the fact that Sims' signed statement contains assertions of voluntariness, composed by the police, does not suffice to save the confession in view of the other circumstances. A strikingly similar recital also dictated by the police was disregarded by the Court in striking down the conviction in *Haley* v. *Ohio,* 332 U.S. 596, 598, 601. Sims' testimony indicates he did not even comprehend the meaning of the recitals of voluntariness or understand the significance of the warnings he was given. His supposed waiver of the right to counsel could not, given his lack of understanding and inability to understand common legal terms expressed in ordinary language, be regarded as "an intentional relinquishment or abandonment of a known right or privilege," *Johnson* v. *Zerbst,* 304 U.S. 458, 464. Plainly, petitioner did not know a lawyer's function or understand how a lawyer could be of assistance to him.

Here, as in *Fikes,* "The totality of the circumstances that preceded the confessions . . . goes beyond the allowable limits" (352 U.S. at 197). The conclusion applies equally to the alleged oral admission to Deputy Jones, the signed statement, and the testimony that the signed statement was reaffirmed two days later.

3. The Physical Violence Inflicted on *Sims* Is Sufficient by Itself to Invalidate the Confessions

We submit that the physical violence inflicted on Sims while in custody, during a police effort to find evidence of the crime by examination of his clothes, is alone sufficient to vitiate the confessions obtained thereafter. It is conceded that he was stripped of his pants and underpants in a room full of men. No witness has denied his story that he was pulled by his private parts and dragged across the floor. His version was not even challenged by cross-examination. It is conceded that he sustained injuries requiring medical treatment while in a room containing a doctor and policemen. No one told any story about how Sims received his injuries except Sims. Dr. Jackson's evasions are plain on the record; he offered no explanation of Sims' injury.

In *Payton* v. *United States*, 222 F.2d 794, 796-97 (D.C. Cir. 1955), a confession was obtained while an accused had blood on his shirt, having been recently bleeding as the result of force reasonably used by the officers to effect his arrest and confinement. The Court excluded a confession and reversed a conviction on the ground that admission of a confession following so shortly after violence upon the prisoner—albeit reasonably necessary violence—was improper. Judge Fahy wrote for the Court (at 797):

> We assume the officers had authority to use the force reasonably necessary to effect the arrest and confinement. But when a confession is elicited so soon after the use of violence upon the prisoner, resulting in bloodshed, the compelling inference is that the confession is not the free act of the prisoner. It is immaterial that other coercion did not occur at the very moments he was questioned and signed the statement. Violence at the hands of the Police admittedly had oc-

curred within about an hour. A confession made in such circumstances, and thereafter repudiated by the accused, should not be admitted in a criminal trial in a Federal court. "The undisputed facts showed that compulsion was applied. As to that matter there was no issue upon which the jury could properly have been required or permitted to pass." Ziang Sung Wan v. United States, 266 U.S. 1, 16-17; . . . [other citations omitted].

Judge Fahy quotes (222 F.2d at 797, note 5), from the opinion in *Stein* v. *New York*, 346 U.S. 156, 182, as follows:

"Physical violence or threat of it by the custodian of a prisoner during detention serves no lawful purpose, invalidates confessions that otherwise would be convincing, and is universally condemned by the law. When present, there is no need to weigh or measure its effects on the will of the individual victim."

The *Stein* opinion further states in language that is relevant here:

Slight evidence, even interested testimony, that it [defendant's injury] *occurred during the period of detention* or at the hands of the police, *or failure by the prosecution to meet the charge* with all reasonably available evidence, might well have tipped the scales of decision below. Even here, it would have force if there were any evidence whatever to connect the admitted injuries with the events or period of interrogation. But there is no such word in the record. (346 U.S. at 183, emphasis added.)

As we have seen, there is ample evidence to show that Sims' injury occurred during detention and the prosecu-

tion has made no effort to meet the charge with any evidence. Nor can it matter that the same officers who later obtained Sims' confessions were not shown to have been present when he was mistreated. There was no showing that the coercive impact of his mistreatment during the investigative process (in the presence of seven or eight officers by Sims' account) was at all eliminated by his being transported thirty or more miles to another county and turned over to other officials. Sims testified as to his continuing pain for a prolonged period far beyond the last of the confessions. The oral admission to Deputy Jones was said to have occurred at about 6:30, less than three hours after Sims was injured. The written statement followed a few hours later after a period of isolated confinement. The final admission of the accuracy of the signed statement to state investigator Cornelius must obviously fall if the statement itself is excluded. It is clearly tied to the written statement. In any event, it occurred after petitioner had been returned to Folkston, the scene of his original beating and again in a room with six policemen.

If the confession involved here had been introduced at a trial held after June 13, 1966, the conviction would plainly be summarily reversed on the authority of *Miranda* v. *Arizona,* 384 U.S. 436; *Johnson* v. *New Jersey,* 384 U.S. 719; cf. *Davis* v. *North Carolina,* 384 U.S. 737, 739. The courts below did not have the benefit of the specific guidelines set forth in *Miranda,* and concededly the full panoply of protections given by that decision are not available to Sims. But in an important sense *Miranda*—apart from its specific guidelines—represents a distillation of the lessons learned through the long experience of this Court in the review of in-custody confession cases. It plainly reflects sensitive awareness of a problem the Court has recognized before, namely, that:

> What actually happens to them [prisoners] behind the closed door of the interrogation room is difficult if not impossible to ascertain. Certainly, if through excess of zeal or aggressive impatience or flaring up of temper in the face of obstinate silence a prisoner is abused, he is faced with the task of overcoming, by his lone testimony, solemn official denials. (*Culombe* v. *Connecticut*, 367 U.S. 568, 573-574, opinion of Justice Frankfurter, joined by Justice Stewart.)

We urge that in light of this consideration, the Court now firmly declare that any in-custody confession which follows close upon the spilling of the prisoner's blood while he is alone in the hands of officers (*Payton* v. *United States, supra*)—a confession following a blow (*Fikes, supra*, Justice Frankfurter, concurring) or unexplained evidence of injury to a prisoner during detention (*Stein, supra*)—must be excluded without further inquiry whether the prisoner's will was overborne by the brutality.

We recognize that this rule has not been uniformly followed in the past and that confessions have been sustained notwithstanding physical violence as in *Lisenba* v. *California*, 314 U.S. 219. But we urge such a general principle as consistent with the spirit and learning of *Miranda* v. *Arizona*, 384 U.S. 436. *Lisenba* dates from an era when this Court's concern in state criminal cases was with the performance of the state courts, not the police. Long before *Miranda*, that concern had broadened. See *Blackburn* v. *Alabama*, 361 U.S. 199; *Spano* v. *New York*, 360 U.S. 315. There can be no justification for police brutality upon a prisoner, and no legitimate police interest in beatings. There will be explanations offered, of course (although not even those were offered here), and speculation that the prisoner was hard-headed and remained unaffected. *Miranda* counsels that no ear be given to these unlitigable

matters. Where blood has flowed, no confession made soon after should be tolerated consistent with due process of law.

Even in the absence of such a general principle, however, the violence upon Sims must vitiate his conviction when considered in conjunction with his limited mentality and general helplessness in the hands of experienced investigators. Plainly Sims had no:

> . . . powers of resistance comparable to those which the Court found possessed by the defendant Cooper in Stein v. New York, 346 U.S. 156, who haggled for terms with the officials to whom he confessed, or the defendant James in Lisenba v. California, 314 U.S. 219, who bragged immediately before his confession that there were not enough men in the District Attorney's office to make him talk. (*Culombe* v. *Connecticut*, 367 U.S. 568, 625, opinion of Justice Frankfurter, joined by Justice Stewart.)

Extraction of confessions from Sims, in his circumstances, and their use to convict him violated the Due Process Clause.[15]

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[15] The assertion of the court below that the conviction may be justified because "even without this confession, the . . . evidence was sufficient to support the verdict" (R. 334) deserves only brief reply. First, it should be mentioned that the sole significant corroboration of the prosecutrix's testimony was the confession. Georgia law and the trial court's charge below required "other evidence independent of hers, sufficient to connect the accused with the offense charged" (R. 313) to corroborate her testimony. Literally nothing in the record except the confessions connect Sims with the offense. Furthermore, the victim never identified Sims as her attacker until his first trial some 5 months after the crime (R. 157-158). Second, and more fundamentally, the voluntariness of a confession must be examined without regard to the other evidence of guilt, and a defendant's constitutional rights are violated by use of a coerced confession to convict, even if there is other convincing evidence of guilt. *Rogers* v. *Richmond*, 365 U.S. 534, 544; *Malinski* v. *New York*, 324 U.S. 401, 404; *Bram* v. *United States*, 168 U.S. 532, 540-542; *Payne* v. *Arkansas*, 356 U.S. 560.

D. *The Decision Below Violates Petitioner's Sixth Amendment Right to Counsel in Conflict With Escobedo v. Illinois, 378 U.S. 478, and Other Decisions of This Court*

Petitioner's trial commenced some four months after the decision in *Escobedo* v. *Illinois,* 378 U.S. 478; thus that decision may be applied in judging his case. *Johnson* v. *New Jersey,* 384 U.S. 719. The *Escobedo* decision focused on the right to counsel under the Sixth Amendment in appraising in-custody confessions. This Sixth Amendment emphasis is in contrast to the reliance upon protection of the Fifth Amendment privilege against self incrimination in *Miranda* v. *Arizona,* 384 U.S. 436.

Most of the elements present in *Escobedo* were present in this case. When Sims' confessions occurred "the investigation [was] . . . no longer a general inquiry into an unsolved crime but ha[d] begun to focus on a particular suspect, the suspect ha[d] been taken into police custody, the police carr[ied] out a process of interrogations that lends itself to eliciting incriminating statements, . . . and the police have not effectively warned him of his absolute constitutional right to remain silent . . ." (378 U.S. at 490-491).

However, it could not be said on this record that Sims had "requested and been denied an opportunity to consult with his lawyer." Sims never requested a lawyer for he was incapable of understanding how a lawyer might help him, had no funds to hire a lawyer, was given no opportunity to consult with friends or family, or even to use a telephone, and was not informed of his right as an indigent to appointed counsel.

We submit that in these circumstances the general principle enunciated in *Escobedo* and in cases decided earlier

require the conclusion that Sims was denied the assistance of counsel in violation of the Sixth Amendment as made applicable to the States by the Due Process Clause of the Fourteenth Amendment. Even before *Escobedo*, it had been recognized that the right to counsel might be violated by in-custody interrogation in the absence of counsel. The Ninth Circuit so held in *Griffith* v. *Rhay*, 282 F.2d 711 9th Cir. 1960), cert. den. 364 U.S. 941. The Ninth Circuit adopted the reasoning of *Crooker* v. *California*, 357 U.S. 433, 438-440, that apart from voluntariness interrogation in the absence of counsel might deny due process if any accused "is so prejudiced thereby as to infect his subsequent trial with an absence" of fundamental fairness, this is to be determined by all the circumstances including the education and mentality of the accused. The Ninth Circuit found Griffith's confession inadmissible despite a failure to request counsel. See also the opinion of Judge Browning in *Brubaker* v. *Dickson*, 310 F.2d 30 (9th Cir. 1962,) cert. den. 372 U.S. 978, generally in accord with *Griffith* v. *Rhay, supra.*

An additional point may be made with respect to Sims' confession to state investigator Cornelius on Monday, April 15. This took place after a warrant against Sims had been issued by a judicial officer. The warrant is not in the record and it cannot be determined on this record whether it was issued upon the basis of the prior confession (though this seems likely) or some other showing against Sims. In any event, at this stage Sims was, though not yet indicted, plainly in the position of an "accused" being held in anticipation of trial. See Ga. Code §27-209, quoted *supra* note 12. He still had no lawyer, but following his confession and the issuance of a warrant against him he was plainly accused and, for every relevant purpose, in a position exactly comparable to a man under indictment. He surely was in

need of a lawyer to prepare for the inevitable trial and to advise him.

The premise of *Spano* v. *New York,* 360 U.S. 315, 324-327 (concurring opinions) and *Massiah* v. *United States,* 377 U.S. 201, is that indictment marks the point in the criminal process when investigation is completed and trial preparation begins. At this point, "'when consultation, thoroughgoing investigation and preparation [are] vitally important, the defendants . . . [are] as much entitled to such aid [of counsel] . . . as at the trial itself.'" *Massiah* v. *United States,* 377 U.S. 201, 205.[16] Obviously, in the proceedings in petitioner's case the period following issuance of the warrant rather than that following indictment was the stage envisaged by this language. It should be noted that petitioner was formally indicted no earlier than a few days before trial on each of the two occasions on which he was tried.[17]

We submit that the principles of *Spano* v. *New York,* 360 U.S. 315, 324-327 (concurring opinions), and *Massiah* v. *United States,* 377 U.S. 201, require that this confession be excluded under the principles of the Sixth Amendment. To be sure, unlike Spano and Massiah, Sims had not yet been formally indicted at the time of the admission to Cornelius. But he was more than a suspect at this point. In every realistic sense he was "the accused" (Ga. Code §27-209) and was "scheduled to be tried" once the police had obtained his signed confession and a warrant against him. The subsequent interrogation by Cornelius was more

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[16] Quoting from *Powell* v. *Alabama,* 287 U.S. 45, 57.

[17] The exact dates of the first indictment and of commencement of the first trial are not in this record. But Sims was indicted at the October 1963 term and the date of sentencing October 9, 1963, appears (R. 251, 256). The second indictment was filed October 6, 1964 (R. 1); trial commenced October 7, 1964 (R. 46, 198, 249) and the verdict was returned October 8, 1964 (R. 2).

than an interrogation focusing on a suspect. Cornelius sought a final nail in the coffin which was already almost closed by the signed confession. This final confession closed the case, and after it effective aid and advice by counsel "at the only stage when legal aid and advice would help" (*Spano, supra,* 360 U.S. at 326) became impossible.

II.

Petitioner Was Denied Equal Protection of the Laws by Rulings of the Courts Below Refusing Evidence That Negroes Were Systematically Excluded From Grand and Petit Juries in Charlton County, and Overruling His Challenge to Those Juries on Grounds of Racial Discrimination in Their Selection.

Georgia's general procedure for selecting grand and petit jurors is as follows: The jury commissioners are directed by statute to examine the tax digest for the names of no more than two-fifths of the most intelligent and upright taxpayers. The names selected are put on tickets and placed in jury boxes, one for grand and one for petit juries, from which the judge later draws the names of those who are to serve for a particular term of court. The names drawn by the judge are placed on grand and petit jury lists (R. 76-80, 84, 86-87). See Ga. Code Ann. §§59-106, 59-108 (1965 Rev. Vol.).

Ga. Code §92-6307 provides that "Names of colored and white taxpayers shall be made out separately on the tax digest." Under local practice in Charlton County, where petitioner was tried and convicted, separate sections of the tax digest are maintained for white and Negro names, the whites listed on white paper, the Negroes on yellow paper (R. 82). The jury commissioners, all of whom are white (R. 83), rely upon their personal knowledge of the persons

listed in the tax digest and their personal opinions of those persons' character and intelligence, in selecting "upright and intelligent citizens to serve as jurors." Ga. Code Ann. §59-106. In practice, they first examine white taxpayers' names, then Negroes' names. Despite a commissioner's testimony that no consideration is given to race, the separate lists make it clear whether any particular taxpayer is white or Negro (R. 80-81, 84, 91-92).

The 1960 United States Census for Charlton County shows 2,656 persons over twenty-one, of whom 728 or 27.4% are non-white (R. 75). The tax digest books show 1,838 Charlton County taxpayers in 1961, of whom 367 or 19.9% are Negroes (R. 74), and 1,908 taxpayers in 1962, of whom 420 or 22% are Negroes (R. 74). There were 1,959 Charlton County taxpayers in 1963,[18] of whom 410 or 20.4% were Negroes (R. 74). Of the 99 jurors chosen by the judge for the October 1964 Term of the Charlton County Superior Court, from which the grand and petit jurors were selected in petitioner's case, only 5 or about 5% were identified as Negroes (R. 74, 89-90, 297-98).[19]

Petitioner offered to prove a consistent and continuing practice under which Negroes had been unconstitutionally barred from or selected in limited numbers for jury service in Charlton County (R. 3-4, 6-8, 11, 70-71). In support of this claim he proffered in evidence certified copies of the grand and petit jury boxes and lists for the period 1954-1963 (R. 72-73, 254-98), but the trial court ruled them inadmissible (R. 72-73, 147). This ruling was affirmed by the Georgia Supreme Court (R. 330-32).

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[18] No statistics regarding the number of taxpayers in 1964 were introduced apparently because such stastistics were not available at the time of trial (see R. 74).

[19] The names and racial identification of taxpayers selected for the 1964 jury boxes were not proffered at trial.

Petitioner makes three contentions here with regard to racial discrimination in jury selection: He first submits that the Georgia courts unconstitutionally refused to receive evidence proferred by him to show jury discrimination in years prior to his trial. This Court has often relied on evidence of jury discrimination going back as far as ten, twenty or thirty years and has held that one seeking to prove jury discrimination is entitled to offer evidence to support his claim (see Part A, *infra*, p. 49).

Petitioner also contends that the jury commissioners' use of segregated tax digests in selecting prospective jurors is unconstitutional. The segregated tax digests and the vague, subjective criteria for juror selection mandated by Ga. Code Ann. §59-106 encourage discriminatory use of the commissioners' discretion. (See Part B, *infra*, p. 52.)

Petitioner finally urges that a prima facie case of racial discrimination was made out by the fact that Negroes comprised 20% of the taxpayers but only 5% of the 1964 jury list. In support of this contention, petitioner will show that there is an extremely small probability that, assuming a fair selection process, so few Negroes would have appeared on the 1964 jury list (see Part C, *infra*, p. 56).

A. *The Georgia Courts Unconstitutionally Refused to Receive Petitioner's Proffered Proof of Racial Discrimination in the Selection of Jurors*

Petitioner offered to prove by certified jury boxes and lists covering the period 1954-1963 a pattern of arbitrary exclusion or limitation of Negroes on the jury lists of Charlton County. "Jury lists for a ten year period were offered in evidence. All were excluded except for the lists of jurors from which the juries who indicted and convicted were taken." Opinion of Georgia Supreme Court (R. 331). Petitioner also offered these lists to prove that the presence of a

Negro on the grand jury which reindicted petitioner following the reversal of his conviction in *Sims* v. *Balkcom*, 220 Ga. 7, 136 S.E.2d 766 (1964), was the result of arbitrary inclusion on the 1964 jury list. These offers of proof were ruled inadmissible apparently on the ground that the grand and petit jury lists in the County had been revised during the summer of 1964, immediately prior to petitioner's reindictment and trial (R. 5, 8, 12, 70, 93, 95). The ruling was affirmed by the Georgia Supreme Court on the ground that no showing had been made of discrimination in the composition of the grand and petit juries involved in the instant case (R. 331).

It is a principle needing no elaboration that in a jury discrimination case, "... this Court must reverse on the ground that the defendant 'offered to introduce witnesses to prove the allegations ... and the [state trial] court declined to hear any evidence on the subject. ...'" *Coleman* v. *Alabama*, 377 U.S. 129, 133, quoting with approval, in a unanimous opinion, from *Carter* v. *Texas*, 177 U.S. 442, 448-49. With the notable exceptions of Coleman and Carter, this Court has consistently reviewed jury discrimination cases on a record covering a number of years. *E.g.*, *Neal* v. *Delaware*, 103 U.S. 370, 397 (no Negro had ever served as juror); *Norris* v. *Alabama*, 294 U.S. 587, 591 (no Negro had served within witnesses' memory); *Pierre* v. *Louisiana*, 306 U.S. 354, 361 (*ibid.*); *Smith* v. *Texas*, 311 U.S. 128, 129 (7 years); *Eubanks* v. *Louisiana*, 356 U.S. 584, 586 (18 years); *Hernandez* v. *Texas*, 347 U.S. 475, 482 (25 years); *Reece* v. *Georgia*, 350 U.S. 85, 87 (18 years); *Arnold* v. *North Carolina*, 376 U.S. 773, 774 (24 years); and see, *Rabinowitz* v. *United States*, No. 21256, 5th Cir., July 20, 1966. p.8 of slip opinion (more than 35 years); *Labat* v. *Bennett*, No. 22218, 5th Cir., August 15, 1966, p. 37 of slip opinion (8 years); *Brooks* v. *Beto*, No. 22809, 5th Cir., July 29, 1966, pp. 14-15

of slip opinion (no negro had ever served as grand juror); *Scott* v. *Walker*, 358 F.2d 561, 572 (5th Cir. 1966) (6 years); *United States ex rel. Seals* v. *Wiman*, 304 F.2d 53, 63, n.5 (5th Cir. 1962) (11 years); *United States ex rel. Goldsby* v. *Harpole*, 263 F.2d 71, 78 (5th Cir. 1959) (no Negro had served within witnesses' memory).

Notwithstanding this substantial body of precedent, establishing beyond peradventure the pertinency of a pattern or practice of past discrimination as a basis for interpreting the significance of the composition of particular juries in the case at issue, the state trial court refused to permit petitioner to examine a jury commissioner regarding the number of Negroes in a petit jury box compiled just *two years* prior to trial.

> The Solicitor General: Your Honor, we will make our objection . . . as to going into a [1962] jury list that doesn't have anything to do with the present grand jury or petit jury. . . . We say under the law he [petitioner] is entitled to a cross section of petit jurors and grand jurors, but that could only pertain to this petit jury and this grand jury—not some that used to be.
>
> The Court: I am of the opinion that would be right (R. 88-89).

Petitioner was thus thwarted in his attempt to make a full record upon which a continuing pattern or practice of racial discrimination in jury selection in Charlton County might have been based. His contention of *systematic* exclusion or limitation of prospective Negro jurors in selection of his grand and petit juries was thus deprived of the evidentiary support which derives from placing present practices in the meaningful context of past actions. As this Court has recognized, "Institutions,

like other organisms, are predominantly what their past has made them. History provides the illuminating context within which the implications of present conduct may be known." *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1, 69. Petitioner seeks nothing more than to have his day in court on his federal constitutional claims. This he has been denied, and with it the equal protection of the laws.

B. *The Use of Tax Digests Containing Racial Designations, As Required by Statute, in Georgia's System of Jury Selection is Unconstitutional.*

This Court has long made clear that "Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race." *Cassell* v. *Texas,* 339 U.S. 282, 286. Petitioner contends that the jury selection procedures established by state law and used in Charlton County, Georgia, encourage and permit the selection of jurors on the basis of race, in violation of the Fourteenth Amendment.

In Charlton County grand and petit jury lists are selected by a jury commission of white commissioners. At the time of petitioner's trial only two-fifths of the most intelligent, upright and experienced citizens on the tax books were eligible to be jurors pursuant to Ga. Code Ann. §59-106. The jury commissioners checked the tax books to determine who was qualified for jury service. In accordance with local practice under Ga. Code §92-6307, which requires that the tax books separately list white and Negro taxpayers, white taypayers were listed on white paper and Negro taxpayers separately on yellow paper.

At the time they select persons from the tax digest, therefore, the jury commissioners have actual knowledge

of the race of each taxpayer.[20] Except for specifying the *maximum* number of persons who may be selected, i.e., two-fifths of the whole number of taxpayers, Ga. Code Ann. §59-106 gives no specific guidance to the commissioners. Rather, the statute requires the commissoiners to employ vague, subjective criteria: uprightness and intelligence. Such criteria, of course, allow broad discretion which may be exercised in a discriminatory manner. Cf. *United States* v. *Louisiana,* 225 F. Supp. 353, 396-97, *aff'd,* 380 U.S. 145; *United States* v. *Atkins,* 323 F.2d 733 (5th Cir. 1963), and cases there cited; *Rabinowitz* v. *United States,* No. 21256, 5th Cir., July 20, 1966, pp. 37-38 of slip opinion.

In the recent case of *Hamm* v. *Virginia State Board of Elections,* 230 F. Supp. 156 (E.D. Va. 1964), *aff'd sub nom. Tancil* v. *Woolls,* 379 U.S. 19, a three-judge district court declared that Virginia statutes requiring that lists of voters and taxpayers be kept in separate books according to race violated the Fourteenth Amendment. The district court stated that it was now

> axiomatic that no State can directly dictate or casually promote a distinction in the treatment of persons solely on basis of their color. To be within the condemnation, the governmental action need not effectuate segregation of facilities directly. Cf. *Anderson* v. *Martin,* 375 U.S. 399, 402, 84 S.Ct. 454, 11 L.Ed. 430 1964. The result of the statute or policy must not tend to separate individuals by reason of difference

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[20] Among the evidence proffered by petitioner but excluded by the trial court (R. 5, 8, 12, 70, 93, 95) were jury boxes clearly indicating the race of prospective jurors: The traverse or petit jury box for August 9, 1954, showed seven persons following 321 names, who were given special numbers, i.e., "1C through 7C" (R. 279) and the petit jury box for August 1, 1960, showed six persons, following 331 names, who were listed as "colored" (R. 288).

in race or color. No form of State discrimination, no matter how subtle, is permissible under the guarantees of the Fourteenth Amendment Freedom. 230 F. Supp. at 157-158.

And when used as the basis for jury selection, the discriminatory effect of segregated tax lists is far from "subtle." The vice of using such lists is two-fold under Charlton County practice. First, the jury commissioner has the means of willful racial discrimination ready to hand. Second, even if a commissioner wishes not to discriminate, he is nonetheless required to make a judgment as to the proportions in which white and Negro taxpayers shall be chosen for jury service. For it is only after considering the white list that the white jury commissioner turns to the Negro list; and under compulsion of the two-fifths statutory limitation upon the maximum number of persons to be chosen, he obviously must make the conscious decision at some point that there are enough whites and that Negroes shall now be selected. It will not do to say that this result is the inevitable product of a selection process that starts with tax lists that the State, for other legitimate reasons, may require to be kept in segregated form. For the precise holding of *Hamm* is that the State has no interests which justify the segregated lists and that they are unconstitutional in themselves. By refusing to give full weight to the *Hamm* decision and to this Court's affirmance of it, the Georgia Supreme Court, in a capital case, has permitted one unconstitutional practice to spawn a more vicious one.

The Georgia Supreme Court tried to minimize the significance of the racially segregated tax lists on the ground that the jury commissioners acted without regard to race (R. 330). But such protestations of good faith are not

in these circumstances sufficient. *Norris* v. *Alabama,* 294 U.S. 587. A selection procedure which provides unnecessary opportunities for discrimination violates the Fourteenth Amendment, whether or not those opportunities are proved to have been seized. In *Avery* v. *Georgia,* 345 U.S. 559, a conviction was reversed because the names of potential jurymen were placed on different colored slips according to race. The trial judge testified that he selected the slips without regard to color, but Chief Justice Vinson stated that "Even if the white and yellow tickets were drawn from the jury box without discrimination, opportunity was available to resort to it at other stages in the selection process." *Id.* at 562. And Justice Frankfurter, concurring said: "We may accept the testimony of the judge who drew the slips from the box as to the honesty of his purpose; that testimony does not refute the fact that there were opportunities to discriminate, as experience tells us there will inevitably be when such differentiating slips were used." *Id.* at 564.

No significant distinction can be made between the selection process in *Avery* and the process used here. In *Avery* the jury commissioners selected prospective jurors for the jury list from the county tax returns.[11] The list was printed with the names of white persons on white tickets and the names of Negroes on yellow tickets. The tickets were then placed in a jury box from which a judge drew the names of those selected to serve on a given panel. A clerk arranged the drawn tickets and typed in final form the list of persons for a panel. 345 U.S. at 560-61. In petitioner's case, the jury commissioners chose prospective jurors from the tax digest having the names of white persons on white paper and the names of Negroes on

[11] These returns presumably were segregated because Ga. Code §92-6307, which is under attack here, was in effect when *Avery* was decided.

yellow paper. The names chosen were put into the jury box from which the superior court judge drew the names for a particular jury list or panel (R. 79, 86). Both in *Avery* and here the use of a procedure relying upon racial differentiation of prospective jurors denies equal protection. As this Court concluded in *Williams* v. *Georgia*, 349 U.S. 375, 382, "it was the system of selection and the resulting danger of abuse which was struck down in *Avery* and not an actual showing of discrimination on the basis of comparative numbers of Negroes and whites on the jury lists." That conclusion is no less applicable here. Cf. *Anderson* v. *Martin*, 375 U.S. 399.

C. *The Results of Jury Selection in the Instant Case Establish a Prima Facie Case of Racial Discrimination*

The principal evidence of racial discrimination in jury selection which petitioner was permitted to present below consisted of the facts that Negroes constituted approximately 20% of the Charlton County taxpayers in 1963, and only about 5% of the jury list from which the jurors were selected who indicted and convicted petitioner.[22] Notwithstanding the trial court's refusal to permit petitioner to make a full record regarding jury discrimination, it is respectfully submitted that this evidence alone established an unrebutted prima facie case of racial discrimination.

It is well settled that a showing of the total exclusion of Negroes from jury lists in jurisdictions where they con-

[22] The only jury commissioner who testified stated that the commissioners only selected persons whom the commissioners knew (R. 78) and that he could only identify 5 Negroes on the October, 1964 jury list (R. 89-90). Under ordinary rules for establishing a prima facie case, petitioner has thus elicited evidence tending to fix the number of Negroes on the list at five. If there were more, the other jury commissioners were available to the State to prove it. No attempt to present such proof was made here and petitioner submits that this record, therefore, establishes that there were but 5 Negroes on the list in question.

stitute a substantial percentage of the population makes out a prima facie case of discrimination. *Norris* v. *Alabama,* 294 U.S. 587. The reason is that it is extremely unlikely that a fair selection procedure would produce no Negroes on such lists where there is a substantial number of Negroes available for service. For the same reason, a significant disparity between the percentage of Negroes selected for jury lists and their percentage in the population from which the lists are drawn also makes a compelling showing of discrimination. Like cases of total exclusion of Negroes, the existence of a substantial disparity in representation is highly unlikely if the selection process has been a fair one. Cf. *Cassel* v. *Texas,* 339 U.S. 282, 289-90; *Brown* v. *Allen,* 344 U.S. 443, 471. A disparity exists in the instant case: Negroes comprise 20% of the taxpayers but only 5% of the October, 1964 jury list. The question, therefore, is whether this disparity is substantial enough to constitute a prima facie showing of racial discrimination.

The test of the significance of disparities is the probability that they would have occurred by chance. This is the implicit basis for the decision in *Norris* v. *Alabama,* 294 U.S. 587, and the other jury discrimination cases in which statistical evidence has been used. On occasion this Court has made this explicit. Thus, in *Smith* v. *Texas,* 311 U.S. 128, 131, the Court held that "Chance and accident alone could hardly have brought about for listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualification for jury service." Similar statements appear in *Hill* v. *Texas,* 316 U.S. 400, 404 and *Eubanks* v. *Louisiana,* 356 U.S. 584, 587. In these and other jury discrimination cases, this Court has defined the problem as that of determining the probability that, assuming the selection was made without regard to race, so few Negroes would have been chosen for jury service. When the probability is small that so few

Negroes would be chosen, the jury discrimination cases in substance hold it proper to reject the assumption that jury selections were made without regard to race.

The determination of these probabilities need not be left to the uncertain guide of common sense. There is a scientific method for solving problems of this type which has been widely used in many branches of science, economics, and social science. This is the mathematical method known as statistical decision theory. The application of this method to jury discrimination problems is fully discussed in an article to be published in the fall of 1966 in the Harvard Law Review. See Finkelstein, *The Application of Statistical Decision Theory to the Jury Discrimination Cases,* 80 Harv. L. Rev. (1966). In terms of statistical theory the issue before the Court is: What is the probability that no more than 5 Negroes would appear on a jury list of 99 when Negroes constituted 20% of the tax list from which the names of jurors were selected and the selection was made without regard to race?[23]

The answer is provided by an accepted mathematical formula, the derivation of which is discussed in detail in Finkelstein, *supra.* Applying that formula to the facts of this case: If a jury list of 99 is selected from a larger list which is 20% Negro, the probability that no more than 5 persons selected for the jury list would be Negro, if the selections were made without regard to race, is approxi-

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[23] Because the selection of names for the jury list was made in two stages—the white jury commissioners selected names from the tax digest for the jury boxes and the judge selected names from the boxes for the jury list—discrimination could have occurred at either stage. But since state officials were responsible for both selection processes, the jury was unconstitutionally chosen regardless of the official responsible for the discrimination. For this reason petitioner need only consider the result of the selection processes, i.e., the racial composition of the October 1964 jury list.

mately 0.00002. In other words, on only one occasion in 50,000, on the average, would a jury list selected at random under these conditions yield the observed results.[24] The probability of this occurrence is so minute that statisticians would uniformly reject the hypothesis that selection was made without regard to race. See *e.g.*, Hoel, INTRODUCTION TO MATHEMATICAL STATISTICS, 49 (1962).[25]

The probability of the result observed in this case is vastly smaller than the probability of the result observed in *Avery* v. *Georgia*, 345 U.S. 559, where this Court held that the statistical evidence made out a clear case of racial discrimination. The evidence in *Avery* showed that although Negroes comprised 5% of the jury list from which the venires were selected, no Negro had been selected for a venire of sixty.[26] This fact, together with the use of yellow slips for the names of Negro jurors—a method similar to the use of the segregated tax list in the instant case—

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[24] The requisite computations for this result are given in the Appendix.

[25] The only jury commissioner who testified stated that jurors were selected on the basis of being "intelligent, upright and good citizens" (R. 78). In order to sustain the state's contention that these factors rather than race accounted for the disparity between the number of Negroes on the tax list and those selected for the jury lists, it would be necessary to assume that on the average three to four times as many whites met these subjective qualifications than did Negroes. See *Finkelstein, supra*, where the method of analyzing the subjective qualifications issue is discussed. No evidence of any such superior rate of qualifications on the part of white taxpayers was introduced by the State nor is there any evidence that this small number of Negroes appearing on the jury list was the result of the application of the statutory criteria.

[26] Mr. Justice Reed, concurring, 345 U.S. at 563, gave the following statistics: "The population of Fulton County is 691,797. The Negroes comprise 25% or 165,814. The tax receiver's digest, from which the jury list is selected has 105,035 white citizens and 17,736 Negroes—14%. The jury list for the year in question had 20,509 white and 1,115 Negroes—5%. From that list a number, 150 to 200, were drawn for service on each of the divisions of the court. Evidently, these were for a week or a term's service. The venire from which the trial jury for Avery was selected numbered 60. All were white."

was held to make a *prima facie* case of discrimination. Mr. Justice Frankfurter, concurring, observed that "The mind of Justice, not merely its eyes, would have to be blind to attribute that occurrence to mere fortuity." 345 U.S. at 564.

The probability of the result observed in *Avery*, *i.e.*, that no Negroes would be selected for a venire of 60 where they comprise 5% of the jury list, was 0.046. This means that, on the average, venires without any Negroes would have appeared in *Avery* approximately five times in every 100. See Finkelstein, *supra*, for the computations. The probability that the venire in *Avery* was fairly chosen was approximately 20,000 times greater than the probability that the jury list in the instant case was fairly compiled.[27] Thus, although *Avery* involved total exclusion of Negroes from a particular venire and in the instant case some Negroes were included on the jury list, the probability that so few Negroes would be chosen in the instant case is vastly smaller than the probability that no Negroes would have been chosen in *Avery*.[28] If in *Avery* the results were suffi-

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[27] Finkelstein's article computes the 0.046 probability for *Avery* on the assumption that for the Avery majority the controlling disparity was that between the number of Negroes on the jury list (5%) and the number of Negroes (none) chosen for the venire in question (see n. 26, *supra*). It may be thought, however, that the Court rather was concerned with the fact that Negroes comprised 14% of the tax rolls yet none were called for service. Applying the same formula used by Finkelstein to compute the figure 0.046 but considering the tax rolls as the relevant universe from which the venire was drawn in *Avery*, the probability that no Negroes would be chosen for a venire of 60 is 0.000117. In other words, in only one chance out of 10,000, on the average, would a fair selection procedure yield the observed results in *Avery*. The probability of this occurrence is still approximately 5 times greater than the probability observed in the instant case.

[28] There are two reasons for this. The first is that in the instant case Negroes comprised 20% of the taxpayers from which the jury list was selected, while in *Avery* they comprised only 5% of the jury list from which the venire in question was chosen. The larger the proportion of Negroes in the universe from which selections are made, the smaller the

ciently improbable to constitute a prima facie case of discrimination, the evidence here must amply sustain petitioner's burden of proof.[39]

CONCLUSION

For the foregoing reasons the judgment below should be reversed.

Respectfully submitted,

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probability that only a few Negroes would be chosen. The second reason is that the group selected in the instant case (99 on the jury list) was substantially larger than the group in *Avery* (60 on the venire). The larger the group considered, the smaller the probability of a substantial disparity in racial proportions.

[39] *Swain* v. *Alabama*, 380 U.S. 202 is not authority for a contrary result. Statistical computations of the type given above were not presented to the Court and *Swain* did not involve the use of a segregated tax digest in the selection of jurors. See Finkelstein, *supra*, for an analysis of *Swain*.

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APPENDIX ON COMPUTATION

The probability that no more than five Negroes would be selected out of 99 when Negroes constituted 20% of the tax list from which the selections were made may be computed by using a formula known as the cumulative binomial distribution. The value of this formula can be determined either by using ready-made tables or approximation methods. We have used the table appearing in Harvard Computation Laboratory, *Tables of the Cumulative Binomial Probability Distribution* (1955). Using that table we have the following for the probability P that no more than five Negroes would be selected:

$$P(v \leq 5) = \sum_{v=0}^{v=5} \frac{n!}{v!(n-v)!} P^v Q^{n-v}$$

$$= \sum_{v=0}^{v=5} \frac{99!}{v!(99-v)!} (0.20)^v (0.80)^{99-v}$$

$$= 0.00002+$$

A description of the derivation and terms of the formula and the use of the tables appears in Finkelstein, *The Application of Statistical Decision Theory to the Jury Discrimination Cases,* 80 Harv. L. Rev. ..... (1966). [To be published in the Fall of 1966.]

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 251.

ISSAC SIMS, JR.,
Petitioner,

vs.

STATE OF GEORGIA,
Respondent.

On Writ of Certiorari to the Supreme Court of Georgia.

BRIEF FOR RESPONDENT.

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IN THE

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ISSAC SIMS, JR.,
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On Writ of Certiorari to the Supreme Court of Georgia.

BRIEF FOR RESPONDENT.

OPINIONS BELOW.

The opinion of the Supreme Court of Georgia under review (R. 328) is reported as **Sims v. State**, 221 Ga. 190, 144 S. E. 2d 103 (1965), cert. granted, 384 U. S. 998, 16 L. Ed. 2d 1013 (1966). Prior decision of the Supreme Court of Georgia setting aside the first conviction on habeas corpus, is reported as **Sims v. Balkcom, Warden**, 220 Ga. 7, 136 S. E. 2d 766 (1964).

JURISDICTION.

Jurisdiction is invoked under 28 USCA, Sec. 1257 (3).

QUESTIONS PRESENTED.

In granting certiorari, the order of this Court declared that the writ was granted, limited to five questions as stated by the petition, as follows:

"1. Whether petitioner's Fourteenth Amendment rights were violated by a conviction and sentence to death obtained on the basis of a confession made under inherently coercive circumstances within the doctrine of **Fikes v. Alabama**, 352 U. S. 191.

"2. Whether petitioner's Fourteenth Amendment rights were violated by the failure of the Georgia courts to afford a fair and reliable procedure for determining the voluntariness of his alleged coerced confession in disregard of the principle of **Jackson v. Denno**, 378 U. S. 368.

"3. Whether petitioner's Fourteenth Amendment right to counsel as declared in **Escobedo v. Illinois**, 378 U. S. 478, was violated by the use of his confession obtained during police interrogation in the absence of counsel, or whether petitioner's right to counsel was effectively waived.

"4. Is a conviction constitutional where:

(a) local practice pursuant to state statute requires racially segregated tax books and county jurors are selected from such books;

(b) the number of Negroes chosen is only 5% of the jurors but they comprise about 20% of the taxpayers; and

(c) a Negro criminal defendant's offer to prove a practice of arbitrary and systematic Negro inclusion or exclusion based on jury lists of the prior ten years is disallowed.

"5. Where a Negro defendant sentenced to death in Georgia for the rape of a white woman offers to prove that nineteen times as many Negroes as whites have been executed for rape in Georgia in an effort to show that racial discrimination violating the equal protection clause of the Fourteenth Amendment produced such a result, may this offer of proof be disallowed?"[1] (R. 356).

Respondent obviously does not concur in the form in which the questions are stated. The contentions of Respondent are fully set out in the "Summary of Argument," infra.

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[1] Petitioner has expressly abandoned this point in his brief (p. 3). Respondent does not agree with the assertion, however, that this question can be raised at a later date. This Court granted certiorari to hear it, and the abandonment of it here constitutes a waiver and "deliberate by-passing" of an existing remedy. See **Fay v. Noia**, 372 U. S. 391, 438, 9 L. Ed. 2d 837 (1963).

STATEMENT.

Issac Sims, a 29 year old Negro, was convicted at the 1963 October Term of the Superior Court of Charlton County, of the rape of a white woman, and sentenced to death (R. 251). His Court-appointed attorney declined to file an appeal to the Supreme Court of Georgia, and while awaiting execution at the Georgia State Prison, habeas corpus was instituted in the City Court of Reidsville, asserting as grounds therefor, denial of counsel, racial discrimination in the selection of the grand and petit juries, and the claim that imposition of the death penalty for rape was violative of the Fourteenth Amendment for several reasons. The trial court remanded the prisoner, but on appeal, the Supreme Court of Georgia held that jury discrimination could not be raised by habeas corpus; rejected the contention that imposition of the death penalty was unconstitutional for any reason; but set aside the conviction on the grounds that the failure of counsel to appeal, and the failure of the trial court to appoint other counsel, constituted a denial of counsel under both the state and federal constitutions. **Sims v. Balkcom, Warden,** 220 Ga. 7, 136 S. E. 2d 766 (1964).

Following remand, the jury boxes were revised (R. 76), petitioner was reindicted at the 1964 October Term (R. 1), tried and again sentenced to death (R. 316). Motion for new trial was filed (R. 22), later amended (R. 24), overruled (R. 317), and appeal was then taken to the Supreme Court of Georgia (R. 318). The conviction was affirmed by that Court. **Sims v. State,** 221 Ga. 190, 144 S. E. 2d 103 (1965) (R. 328). This Court granted certiorari on June 20, 1966 (R. 356), limited to 5 questions.[2] **Sims v. Georgia,** 384 U. S. 998, 16 L. Ed. 2d 1013 (1966).

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[2] See "Questions Presented", supra.

The facts material to an understanding of the issues are as follows: On April 13, 1963, at approximately 10 o'clock A. M., the victim, a 29 year old white woman (R. 157), was proceeding toward her home on a dirt road approximately 3 miles from St. George, Georgia, when petitioner in a following vehicle suddenly rammed her car from the rear, knocking it in the ditch and turning it completely around (R. 151). Petitioner emerged from his vehicle, forced the victim into the woods where she was choked, struck in the face, and forcibly raped (R. 152). When first seen following the crime, her face was streaming blood (R. 159) and her eyes, nose, and mouth were bleeding (R. 161, 187). As also stated by the examining physician,

> "When I saw her she was lying on the emergency room table, very emotionally upset and almost in a state of shock from the experience that she said she had just gone through. Her clothes were dirty that she had on; her face was dirty; there was mud about her legs; and her face had blood stains, had bruise marks, and there was clotted blood about, particularly her nose, and the eyes were bloodshot. There were marks on her neck, chest, and breast, and there were marks on her lower abdomen, and her female parts showed evidence of fresh trauma. There was a bleeding area and a small torn area in the lower part" (R. 153).

Petitioner left the scene on foot in the direction of the Toledo community (R. 153) and while police officers were tracking with bloodhounds at the scene (R. 180) a local citizen contacted his Negro employees at Toledo and instructed them to be on the lookout for any strange man (R. 163). Around 2:30 P. M. that afternoon, two of these Negro employees, T. W. Walker and Arthur Lee Walker, spotted petitioner at the Toledo community with mud on his clothes (R. 170). Upon approaching petitioner,

Arthur advised petitioner that the "law" was looking for him, after which the following ensued:

> ". . . and I asked him did he really attack that white woman.
>
> Q. You asked him what?
>
> A. Did he attack that white woman.
>
> Q. And what did he say?
>
> A. He said he did.
>
> Q. Did anybody tell him to make a statement?
>
> A. No, sir.
>
> Q. And you asked him what, now?
>
> A. I asked him did he attack that white woman, and he said 'yes'. And at that time he took off and took a little trot towards the swamp down there, and I backed up to the window and asked Boy Roberson for his gun, and I called him, and he turned and come back to me, and he got just about to me and I throwed the gun on him and told him to go and sit on T. W.'s porch . . ." (R. 176-7).

This admission, it should be noted, was admitted without objection.

Petitioner was picked up by the Walkers' employer around 3:30 P. M. (R. 164), and turned over to two state patrolmen (R. 184) who took him to Dr. Jackson's office in Folkston where his clothes were removed for evidence (R. 185). Following this, petitioner was removed to the Ware County jail in Waycross, Georgia (R. 185), around 5 or 6 o'clock (R. 133). Around 6:30 that same afternoon, petitioner recognized Deputy Dudley Jones at the jail whom he had known as a deputy sheriff in Charlton County, and called to him. A conversation ensued in which petitioner stated that he had "got in trouble with a white woman" and wished to make a statement to the sheriff (R. 209-210). Deputy Jones contacted Sheriff Lee, and around 10:30 that same night, Sims was brought

downstairs to the interview room where his statement (R. 226) was written out, read to him and signed by him, the entire proceeding taking only 20 to 30 minutes (R. 104, 119, 212). Sheriff Lee testified that he advised Sims that he was entitled to an attorney and that any statement could be used against him in Court (R. 97, 99, 224). Petitioner stated that he did not desire an attorney (R. 100, 120, 224). Petitioner Sims testified under oath that he remembers the statement being read to him (R. 136); that all the officers talked "nice" to him in the interview room (R. 139); that nobody threatened him (R. 140); that he recalls the sheriff telling him that anything he said could be used against him (R. 140); that Deputy Jones was "friendly" to him and he wasn't scared (R. 141-2); that nobody beat or threatened him (R. 142); that he considered Deputy Jones his friend (R. 143); that he signed the statement after it was read to him (R. 141); and that he signed it because it was "right" (R. 141).

At his second trial, petitioner was represented by a Negro attorney active in civil rights litigation who filed plea in abatement to the indictment based upon a claim of jury discrimination (R. 3); a challenge to the array of petit jurors for like reason (R. 6); motion for change of venue (R. 9); motion to suppress the confession made in the Ware County jail (R. 13); a plea in abatement attacking the Georgia rape statute, Code Sec. 26-1302, facially and as applied (R. 17); and an oral motion to quash. All of these motions were denied (R. 5, 8, 12, 16, 18, 146). As it will be necessary to refer at length to the evidence relative to several of these motions in the Argument, further reference will not be made here. The trial commenced on October 7, and was concluded on October 8, resulting in a verdict of guilty without recommendation of mercy (R. 2). Motion for new trial was filed in the usual "skeleton" form (R. 22). In due course, it was amended so as to assign error on the admission of the

confession and call in question the Georgia procedure of submitting the issue to the jury (R. 24). The motion was overruled (R. 317). Appeal was thereupon taken to the Supreme Court of Georgia by bill of exceptions which additionally assigned error on the orders overruling the several pleas and motions previously referred to (R. 318). The Supreme Court of Georgia affirmed (R. 328). This Court granted certiorari (R. 356).

SUMMARY OF ARGUMENT.

I.

Admission in evidence of the confessions obtained from petitioner while in custody violated none of his rights.

(A) Prior to trial, a full scale hearing was held by the Court on Petitioner's motion to suppress the confessions, which complied with the requirements of **Jackson v. Denno**, 378 U. S. 368, 12 L. Ed. 2d 908 (1964). The only thing which the trial court did not do that it might have done, was to read into the record explicit findings of fact. Cf. **Boles v. Stevenson**, 379 U. S. 43, 13 L. Ed. 2d 109 (1964). However, any failure in the respect, even assuming it otherwise deficient, is immaterial here, since (1) Counsel for petitioner expressly waived any further effort on the part of the Court to comply with **Jackson v. Denno**, and (2) Petitioner himself having testified under oath at the trial that he signed the confession, that he was not afraid, and that it was "right", demanded a finding that the confessions were voluntary, as the Supreme Court of Georgia so held (R. 329).

(B) The standards applied by the trial court in its charge to determine voluntariness (in effect, Code, § 38-411) do not fall short of that required by decisions of this Court. The sufficiency of instructions in this regard is not a matter of federal concern. **Lyons v. Oklahoma**, 322 U. S. 596, 601, 88 L. Ed. 1481 (1944).

(C) The confession was not obtained under inherently coercive circumstances. Petitioner was taken into custody around 3 o'clock on Saturday afternoon. Just prior thereto, before being arrested, he had spontaneously exclaimed to Negro turpentine workers that he had "attacked that white woman" (R. 176). He was placed in

jail between 5 and 6 o'clock P. M., and around 6:30, upon seeing a deputy sheriff whom he had known for many years, called to the deputy and in the course of a casual conversation, stated that he had raped a white woman, and that he wished to make a statement to the sheriff (R. 210). Around 10:30 that same evening he was brought downstairs in the jail where the statement was made, after being advised fully of his rights, the entire conversation taking 15 to 30 minutes. Petitioner's claim that he was earlier subjected to physical abuse while being examined in a doctor's office prior to being put in jail are disputed by the evidence, and in any event, no causal relation is shown between what took place in the doctor's office that afternoon and the confessions made later that night in the jail, in the presence of entirely different persons.

(D) Since petitioner expressly stated that he did not desire counsel after being fully advised of his rights, use of the confessions later obtained does not violate the rule of **Escobedo v. Illinois**, 378 U. S. 478, 12 L. Ed. 2d 977 (1964).

II.

Discrimination in jury selection does not appear from the record.

(A) No error is shown from the action of the Georgia Courts in restricting proof to the current jury lists, since it appears that the lists had just been revised, and Negroes were then serving on juries in Charlton County. In any event, (1) The offer of proof was not sufficient; (2) The evidence was sufficient to overcome any prima facie case which such evidence otherwise might have established.

(B) Use of the county tax digest in making up the jury lists is not unconstitutional because of the fact that the digest is required by law to be separated according to race. The digest is used in making up the jury boxes,

not the panels. As to the former, the decisions of this Court require that jury commissioners apprise themselves of the racial identity of those eligible for service, in order to insure that discrimination does not result. This process is deliberative. **Avery v. Georgia,** 345 U. S. 559, 97 L. Ed. 1244 (1953), on the other hand, involves the making up of the panels for each term of court, and the selection process at this stage is designed to be by chance, without regard to the identity of individual jurors. The legislative history of the state law attacked here (repealed in 1966) shows that it was not designed as an instrument of discrimination, but was motivated by a desire to facilitate identification in registration made difficult by previous practice whereby Negroes were entered on the tax digest under the names of their employers.

(C) There was no prima facie showing of discrimination from the fact that Negroes constitute 20% of the taxpayers, and a lesser percentage of jurors. **Swain v. Alabama,** 380 U. S. 202, 13 L. Ed. 2d 759 (1965); **Brown v. Allen,** 344 U. S. 443, 97 L. Ed. 469 (1953).

ARGUMENT.

I.

No Rights of Petitioner Were Violated by Admission in Evidence of the Confessions.

Petitioner contends that admission of the confessions in evidence at the trial were violative of his rights for four reasons. Respondent will consider these contentions in the same order urged by petitioner.

A. The Decision Below Is Not in Conflict With Jackson v. Denno.

It is the position of Respondent that the rule of **Jackson v. Denno**, 378 U. S. 368, 12 L. Ed. 2d 908 (1964), was not violated by the state courts because (1) The procedure followed below complied with the requirements of that decision, (2) Counsel for petitioner during trial expressly waived any further proceedings by the court to comply with the rule, and (3) Under the undisputed facts, there was no issue for determination, petitioner's own testimony demanding a finding of voluntariness.

First, as to the procedure employed by the Court, it is to be observed that prior to trial, counsel for petitioner filed a "motion to suppress illegally obtained evidence" (R. 13-16) which sought to suppress the written confession. A full scale hearing was had on this motion before the trial began outside the presence of the jurors (R. 47). At this hearing, the sheriff and deputy sheriff who were present when the confession was made testified at length, as well as petitioner himself (R. 96-145). At the conclusion, the motion was overruled (R. 147, 16).

Prior to the decision of this Court in **Jackson v. Denno**, supra, Georgia was one of the states which followed the New York rule, as this Court noted (378 U. S. at 396),

As stated in **Downs v. State**, 208 Ga. 619, 621, 68 S. E. 2d 568 (1952),

> "The State having made out a prima facie case that the alleged confession was freely and voluntarily made, it was a question for the jury to determine on conflicting evidence whether the alleged confession was freely and voluntarily made."

While it was early suggested that the preliminary hearing should be held outside the presence of the jury, **Hall v. State**, 65 Ga. 36 (1880), in practice this rarely has been done in the past, cf. **United States v. Carnignan**, 342 U. S. 36, 38, 96 L. Ed. 48 (1951), and note, 49 Minn. L. R. 360, 363 (1964), it was done here. In addition, when the matter of the confession came up during trial before the jury, the latter was excused while Sheriff Lee was subjected to cross-examination before the confession was admitted (R. 225), but counsel for petitioner then withdrew his request (R. 226). The Court also submitted the issue of voluntariness to the jury (R. 312), but this was necessary under state law. The Constitution of Georgia, Art. I, Sec. I, Par. V (Code Ann., § 2-105), guarantees every accused "a public and speedy trial by an impartial jury." See also, Constitution, Art. VI, Sec. XVI, Par. I (Code Ann., § 2-5101), declaring that "The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate . . ." This includes the right of the accused to have the issue as to the voluntariness of a confession ultimately decided by a jury. **Claybourn v. State**, 190 Ga. 861, 869, 11 S. E. 2d 23 (1940). To comply with this Court's decision in the **Denno** case, the issue must now be independently resolved by the trial judge, but in order to comply with the State Constitution, it must also be submitted to the jury. See Leverett, "Confessions and the Privilege Against Self-Incrimination," 1 Ga. St. B. J. 433, 441 (May, 1965), and cf. Siegel, "The Fallacies of Jackson v. Denno," 31 Brooklyn L. R. 50, 58

(1964); Note, 50 Iowa L. R. 909, 917 (1965). About the only thing which the trial judge might have done here which he did not do would have been to read into the record specific findings of fact so as to afford "a reliable and clear cut determination of the voluntariness of the confession." **Boles v. Stevenson**, 379 U. S. 43, 45, 13 L. Ed. 2d 109 (1964). However, as respondent will presently show, the evidence so far demanded a finding of voluntariness as to render this failure harmless. The Georgia procedure followed here was therefore tantamount to the Massachusetts rule, which this Court specifically approved in **Jackson v. Denno**, supra (378 U. S. at 378).

Second, any further effort toward compliance with **Jackson v. Denno** was expressly waived here. After the state had questioned Sheriff Lee as to the details of the confession, the following transpired:

> "The Defendant's Attorney: Your Honor, we'd like to have the opportunity to examine this witness before the statement is read into the record.
>
> The Court: All right.
>
> The Solicitor General: Would you like to do it at this time?
>
> The Defendant's Attorney: I believe the rule requires that the jury be excused.
>
> The Court: All right, let the jury go to the jury room.
>
> (The jury thereupon retired from the court room.)
>
> The Solicitor General: I was under the impression that he had already examined Sheriff Lee this morning concerning this statement, and that is a matter of record.
>
> The Court: All right.
>
> The Defendant's Attorney: As your Honor knows, the rule has been recently changed by the Supreme

Court of the United States, and we did have an opportunity to examine the witness today, and on that basis, your Honor, I withdraw my request that the jury be excused and let him proceed with the direct examination. I don't know whether the procedure being followed at this time satisfied the rule decided by the Supreme Court on June 22, 1964, that the Court must make judicial determination whether the statement was made voluntarily before it is read to the jury. We did make an examination today, and I withdraw the request for the jury to be excused.

The Court: All right, bring the jury back" (R. 225-6).

This clearly constitutes a waiver—a "deliberate bypassing" of any further or different procedural handling of the issue. **Fay v. Noia,** 372 U. S. 391, 438, 9 L. Ed. 2d 837 (1963). Insofar as it might be urged that petitioner did not himself participate in this decision, it is enough to say that this technical issue was of such nature that petitioner could not realistically comprehend it anyway. **Whitus v. Balkcom,** 333 F. 2d 496 (C. A. 5th, 1964), cert. den. 379 U. S. 931, 13 L. Ed. 2d 343 (1965).

Third, the evidence demanding a finding that the confession was voluntary, and any failure of the trial court to make an express finding to this effect was harmless. The Supreme Court of Georgia so held. See division 5 (c) of the syllabus to its decision (R. 329). The crime was committed around 10 o'clock A. M. on Saturday, April 3, 1963 (R. 150). At approximately 1 or 2 o'clock later that afternoon, petitioner appeared at the Toledo settlement, and before he was ever taken into custody, stated to several Negro turpentine workers that he had "attacked a white woman" (R. 176, 179). He was then placed under citizen's arrest by these Negro workers (R. 176), and handed over to the Georgia State Patrol around 3 o'clock

(R. 185). Petitioner was taken to Dr. Jackson's office where a physical examination was conducted which lasted 15 minutes (R. 207). He was then taken to the hospital where a cut over his eye was treated (R. 207), after which he was taken to the Ware County jail and confined some time between 5 and 6 P. M. (R. 133). Some time around 6:30, Deputy Dudley Jones happened to be putting a prisoner in the jail (R. 210), when petitioner, recognizing him as having been a deputy previously in Charlton County, called to Deputy Jones and told him that he, petitioner, had "got in trouble with a white woman" (R. 113, 138, 210). Upon being asked whether he wished to make a statement to the sheriff, petitioner replied that he did (R. 210). Petitioner admitted talking to Deputy Jones, and that he was treated "nice" and no effort was made to beat him or to "say anything" to him (R. 139). About 10:30 later that night, petitioner was brought downstairs in the interview room where the confession was made (R. 113, 210, 223). Petitioner testified under oath that the officers talked "nice" to him (R. 139); that he wasn't beaten or threatened (R. 139-142); that he wasn't afraid of Deputy Jones, who was "friendly" to him (R. 141-3); that he recalls the Sheriff telling him that anything he said could be used against him (R. 140); that he wasn't scared (R. 142); that the statement was read to him, and that he signed it because it was right (R. 141). It is also undisputed that the interrogation and taking of the statement took only about 15 to 30 minutes (R. 104, 119). Petitioner had not been taken before a judge, as it was Saturday evening and none was available (R. 236).

It is thus seen that petitioner confessed initially after having been in jail only an hour or so during a casual conversation, and that the written confession was given about 4 hours later, the latter lasting only 30 minutes at the most. There is not the slightest evidence that the confessions made in the Ware County jail were anything

but voluntary. To hold otherwise would require a rejection of petitioner's own sworn testimony at the trial. Where as here an accused admits at the trial that his confession was signed after it was read to him and because it was "right," there is no issue for judge or jury to determine. Viewed in the light of the previous, spontaneous confession to the Negro turpentine workers made before he was taken into custody (R. 176, 179), the record "suggests strongly that petitioner had concluded, quite independently of any duress by the police, that it was wise to make a clean breast of his guilt." **Stroble v. California,** 343 U. S. 181, 191, 96 L. Ed. 872 (1952).

B. **The Standards Applied Below to Determine Voluntariness Were Not Insufficient.**

This contention (Brief, p. 22) attacks the charge on voluntariness given to the trial jury (R. 312), which was in effect the provisions of Ga. Code, § 38-411, which declares:

> "Confessions must be voluntary.—To make a confession admissible, it must have been made voluntarily, without being induced by another, by the slightest hope of benefit or remotest fear of injury."

Under decisions of this Court dealing with confessions, "the accepted test is their voluntariness," **Gallegos v. Nebraska,** 342 U. S. 55, 65, 96 L. Ed. 86 (1957), which depends "upon a weighing of the circumstances of pressure against the power of resistance of the person confessing." **Stein v. New York,** 346 U. S. 156, 185, 97 L. Ed. 1522 (1953); **Fikes v. Alabama,** 352 U. S. 191, 197, 2 L. Ed. 2d 246 (1957). "In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort." **Haynes v. Washington,** 373 U. S. 503, 513, 10 L. Ed. 2d 513 (1963). Ultimately, the test announced in the decisions of this

Court do not differ from that as stated by Georgia law and applied below. **Rogers v. Richmond**, 365 U. S. 534, 5 L. Ed. 2d 760 (1961), relied upon by petitioner, does not hold that any specific form of words must be used. It does not deal with what **must be considered** but rather with one thing which must **not** be considered, i. e., the probable reliability of the confession as one circumstance in determining its voluntariness. 365 U. S. at 542. This is a different proposition from the contention made here which was rejected by this Court in **Lyons v. Oklahoma**, 322 U. S. 596, 601, 88 L. Ed. 1481 (1944), where it was said:

> "The question of how specific an instruction in a state court must be upon the involuntary character of a confession is, as a matter of procedure or practice, solely for the courts of the state. When the state approved instruction fairly raises the question of whether or not the challenged confession was voluntary, as this instruction did, the requirements of due process under the Fourteenth Amendment are satisfied and this Court will not require a modification of local practice to meet views that it might have as to the advantages of concreteness."

C. The Confession Was Not Obtained Under Inherently Coercive Circumstances.

The confession here was given after petitioner had been in custody only 7 hours, and after a period of interrogation of only 30 minutes at the most. The case therefore differs from cases where an accused is subjected to persistent and repeated questioning over a period of several days, such as **Chambers v. Florida**, 309 U. S. 227, 84 L. Ed. 716 (1940); **White v. Texas**, 310 U. S. 530, 84 L. Ed. 1342 (1940); **Watts v. Indiana**, 338 U. S. 49, 93 L. Ed. 1801 (1949); **Harris v. South Carolina**, 338 U. S. 68, 93 L. Ed. 1815 (1949); **Johnson v. Pennsylvania**, 340 U. S. 881, 95 L. Ed. 640 (1950); **Culcombe v. Connecticut**, 367

U. S. 568, 6 L. Ed. 2d 1037 (1961); **Fikes v. Alabama,** 352 U. S. 191, 2 L. Ed. 2d 246 (1957). Nor is this a case where the accused was questioned for a long period without rest or sleep, as in **Ashcraft v. Tennessee,** 322 U. S. 143, 88 L. Ed. 1192 (1944). Nor was it a case where the accused was seen to have been suffering from a mental disorder, as in **Fikes v. Alabama,** supra; **Spano v. New York,** 360 U. S. 315, 3 L. Ed. 2d 1265 (1959); **Blackburn v. Alabama,** 361 U. S. 199, 4 L. Ed. 2d 242 (1960); **Reck v. Pate,** 367 U. S. 433, 6 L. Ed. 2d 948 (1961); **Culcombe v. Connecticut,** 367 U. S. 568, 6 L. Ed. 2d 1037 (1961). Nor is this a case where the accused was subjected to "trickery" in order to induce a confession, as in **Spano v. New York,** supra. There was no threat to bring in members of the accused's family and implicate them, as in **Culcombe v. Connecticut,** supra. There was no request and denial of counsel, as in **Haynes v. Washington,** 373 U. S. 503, 10 L. Ed. 2d 513 (1963). The undisputed evidence was that petitioner was advised that he was entitled to an attorney and that anything he said could be used against him (R. 97, 99, 120, 220, 224). Sims himself admitted he was advised that any statement he made could be used against him (R. 140). While the accused was stripped for purposes of examination, the entire undertaking took only 15 minutes (R. 207), and there was no instance of keeping the accused naked over a 5 or 6 hour period until he confessed, as in **Malinski v. New York,** 324 U. S. 401, 89 L. Ed. 1029 (1945). By petitioner's own sworn testimony, he was not threatened, he was not afraid, he was not beaten, and he signed the confession because it was "right" (R. 136-143). At the time the confession was signed, petitioner had not had supper, but he did not testify as to being hungry, only "I could have eat" (R. 136), and it appears he had been in jail only about 4 or 5 hours and had not been in custody long enough to be fed (R. 111). The arrest occurred around 3 P. M. on a Saturday afternoon (R. 137), when no judge was available for commitment hearing

(R. 236),[1] and hence it is not a case when a prisoner is held incommunicado without being carried before a magistrate.

The case of **Fikes v. Alabama**, supra, principally relied upon for the contention that the confessions were obtained under "inherently coercive circumstances," is completely inapposite. In that case, the accused was subjected to persistent questioning over the period of a week before he confessed; there was evidence of mental trouble; prompt commitment was denied; and efforts of the accused's father and an attorney to see him were rebuffed.

Nor are the confessions rendered inadmissible by any claim of alleged physical mistreatment. Petitioner testified that while in Dr. Jackson's office in Folkston, Dr. Jackson knocked him down, kicked him over the eye, and "drug" him over the floor by his privates (R. 131).

To begin with, Dr. Jackson denied that he knocked petitioner down or that he was beat while in his office (R. 204). For purposes of review, the Doctor's testimony in the respect must be accepted as true. **Haley v. Ohio**, supra (338 U. S. at 52): **Gallegos v. Nebraska**, supra (342 U. S. at 61); **Thomas v. Arizona**, 356 U. S. 390, 2 L. Ed. 2d 863 (1958).

It is undisputed that petitioner was treated for a cut over his eye at the hospital in Folkston (R. 204, 207), but

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[1] Code § 27-212 referred to in the brief of petitioner (p. 33) expressly recognizes that officers arresting without a warrant have a prescribed number of hours in which to carry the arrested person before an officer for hearing. Prior to the amendment of these two sections in 1956 (Ga. Laws 1956, p. 796), the requirement was not qualified by any stated number of hours. Here, however, the warrant for petitioner's arrest had been obtained (R. 239), and hence Code § 27-212 was not applicable, but rather Code § 27-210, which declares that the accused should be brought before a magistrate within 72 hours of arrest. Under Georgia law, capital offenses are bailable only before a judge of the superior court. Code § 27-901.

Dr. Jackson says he fell in the floor (R. 204). Dr. Jackson was extensively cross-examined by counsel for petitioner, but there was no effort to question him concerning the claims that he pulled petitioner by his privates (R. 197-208). No confession was elicited or attempted to be elicited at the doctor's office. The sole purpose of this examination was to ascertain whether there was any blood on petitioner or his pants, in view of the fact that the victim was seen to have been in her monthly period (R. 205). None of the officers or other persons who were present in the doctor's office were present at the jail when the confession was made. The petitioner was taken completely away from the scene of the doctor's office in Folkston, and carried 35 miles to the jail in Waycross, Georgia, before the matter of any confession was ever discussed. The written confession was not given until over 7 hours after the incident in the doctor's office, in entirely different surroundings, before entirely different persons, and without any connecting circumstances whatsoever.

Respondent specifically denies that any violence was committed on petitioner.[2] However, even assuming that petitioner was struck in the doctor's office, the decisions of this Court make plain that this fact alone would not bar use of confessions later obtained. **Lisenba v. California**, 314 U. S. 219, 235, 86 L. Ed. 166 (1941); **Lyons v. Oklahoma**, 322 U. S. 596, 602, 88 L. Ed. 1481 (1944); **Stroble v. California**, 343 U. S. 181, 191, 96 L. Ed. 872 (1952); **Thomas v. Arizona**, 356 U. S. 390, 2 L. Ed. 2d 863 (1958). Of course, any confession made "concurrently" with physical torture is thereby rendered inadmissible. **Stein v. New York**, 346 U. S. 156, 182, 97 L. Ed. 1522 (1953). "When this Court is asked to reverse

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[2] It should be noted that petitioner had been involved in a wreck just prior to the assault (R. 151) and the struggle between petitioner and the victim appeared to have been a violent one (R. 152, 159, 161, 187, 191).

a state court conviction as wanting in due process, illegal acts of state officials prior to trial are relevant only as they bear on petitioner's contention that he has been deprived of a fair trial, either through the use of a coerced confession or otherwise." **Stroble v. California,** supra. "Involuntary confessions, of course, may be given either simultaneously with or subsequent to unlawful pressure, force or threats. The question of whether those confessions subsequently given are themselves voluntary depends on the inferences as to the continuing effect of the coercive practices which may fairly be drawn from the surrounding circumstances. The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, **at the time he confesses,** is in possession of mental freedom to confess or deny a suspected participation in a crime," **Lyons v. Oklahoma,** supra.

In **Thomas v. Arizona,** supra, the prisoner was lassoed under threatening circumstances at the time of his arrest and again subsequently before being placed in jail. His confession made the following morning was held not invalidated by the experiences of the day previous, the Court declaring: "Deplorable as these ropings are to the spirit of a civilized administration of justice, the undisputed facts before us do not show that petitioner's oral statement was a product of fear engendered by them" (356 U. S. at 400).

In **Stroble v. California,** supra, the accused was arrested around noon and while being searched, the policeman kicked his foot to make him stand properly and then threatened the accused with a black jack. While awaiting for the police car to arrive, when asked whether he had committed the crime, accused mumbled something, whereupon a park foreman standing nearby slapped him. On the way to the jail, petitioner confessed. Upon arriving at the district attorney's office a short time later, he

again confessed in detail. Rejecting the contention that the previous violence vitiated the subsequent confessions, this Court declared:

> "Whatever occurred in the park at the foreman's office occurred at least an hour before he began his confession in the District Attorney's office, and was not accompanied by any demand that petitioner implicate himself. Likewise his statement to the officer while on the way to the district attorney's office was admittedly voluntary. In the District Attorney's office, petitioner answered questions readily; there was none of the pressure of unrelenting interrogation which this Court condemned in **Watts v. Indiana**. . . . His willingness to confess to the doctors who examined him, after he had been arraigned and counsel had been appointed, and in circumstances free of coercion, suggests strongly that petitioner had concluded, quite independently of any duress by the police, 'that it was wise to make a clean breast of his guilt' " (343 U. S. at 191).

In **Lyons v. Oklahoma**, supra, the accused was charged with the murder of a tenant farmer, his wife and small child, it being contended that the accused thereafter burned the house with the bodies in it to conceal the crime. A pan containing the victims' bones was placed in his lap during the questioning which resulted in one confession. This confession was not sought to be introduced against him, but later that day, he was taken to the state prison where another confession was obtained which was admitted. In holding that this misconduct on the part of the officers did not invalidate the second confession, the Court said:

> "The Fourteenth Amendment does not protect one who has admitted his guilt because of forbidden inducements against the use at the trial of his subsequent confessions under all possible circumstances.

> The admissibility of the later confession depends upon the same test—is it voluntary. The effect of earlier abuse may be so clear as to forbid any other inference than that it dominated the mind of the accused to such an extent that the later confession is involuntary. If the relation between the earlier and later confession is not so close that one must say the facts of one control the character of the other, the inference is one for the triers of fact and their conclusion, in such an uncertain situation, that the confession should be admitted as voluntary, cannot be a denial of due process" (322 U. S. at 603).

Also pertinent to the facts here, in that petitioner was removed to entirely different surroundings before the questioned confession was obtained, is the language of this Court, viz.:

> "It followed the prisoner's transfer from the control of the sheriff's force to that of the warden's. One person who had been present during a part of the time while the Hugo interrogation was in progress was present at McAlester, it is true, but he was not among those charged with abusing Lyons during the questioning at Hugo" (322 U. S. at 604).

In **Lisenba v. California**, supra, the accused, while in custody on Monday, was slapped by an officer. He confessed the following day. It was held that use of the confession was not a denial of due process under these circumstances (314 U. S. at 240).

In view of the circumstances here—the lack of anything to connect what transpired in the doctor's office with the confession made several hours later—coupled with the testimony of the accused at the trial to the effect that he was not scared or afraid (R. 127-144) it is clear that the admission of the written confession (R. 226), and the peti-

tioner's confirmation of it several days later (R. 238) did not amount to a "failure to observe that fundamental fairness essential to the very concept of justice". **Lisenba v. California,** supra (314 U. S. at 236).

D. **The Decision Below Does Not Violate Petitioner's Sixth Amendment Right to Counsel under Escobedo v. Illinois, 378 U. S. 478, 12 L. Ed. 2d 977 (1964).**

In **Escobedo,** the crucial facts were (1) that the accused was never advised of his right to counsel, and (2) he specifically requested counsel which request was denied.

Here, petitioner was fully advised as to his rights (R. 97, 99, 120, 220, 224), and he expressly declared that he did not desire an attorney (R. 100, 120, 224).

What was done here came very close to complying with the requirements of **Miranda v. Arizona,** 384 U. S. 436, 16 L. Ed. 2d 694 (1966), although that case is not applicable here. **Johnson v. New Jersey,** 384 U. S. 719, 16 L. Ed. 2d 882 (1966).

> "The mere fact that a confession was made while in the custody of the police does not render it inadmissible."
>
> **McNabb v. United States,** 318 U. S. 332, 346, 87 L. Ed. 819 (1943).

> "And certainly we do not mean to suggest that all interrogation of witnesses and suspects is impermissible."
>
> **Haynes v. Washington,** 373 U. S. 503, 515, 10 L. Ed. 2d 513 (1963).

And, in **Miranda v. Arizona,** supra, it was said:

> "An express statement that the individual is willing to make a statement and does not want an attorney

followed closely by a statement could constitute a waiver." 16 L. Ed. 2d at 724.

• • •

"Confessions remain a proper element in law enforcement" • • •

"Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today" (16 L. Ed. 2d at 726).

The Court of Appeals for the District of Columbia has construed Escobedo contrary to that as contended for by petitioner. See **Jackson v. United States**, 337 F. 2d 136, 140-141 (C. A. D. C. 1964), cert den. 380 U. S. 935, 13 L. Ed. 2d 822 (1965); **Long v. United States**, 338 F. 2d 549 (C. A. D. C. 1964). In the **Jackson case**, it was said:

"We conclude that no rule of law required the exclusion of this appellant's confession, voluntarily made, after he had been warned by the F. B. I., the police and the United States Commissioner acting pursuant to Rule 40 (b). He had not requested that counsel be appointed; he had retained no lawyer; that one was not then appointed for him denied him no right; and as the law now stands, there is no automatic rule of exclusion which will bar use of such a confession by an accused who has no lawyer, under circumstances such as appear on the record before us."

In **Massiah v. United States**, 377 U. S. 201, 12 L. Ed. 2d 246 (1964), a federal prosecution subject to the Sixth Amendment, reliance was placed on the fact that Massiah was tricked, viz.:

"In this case, Massiah was more seriously imposed upon . . . because he did not even know that he was under interrogation by a government agent" (377 U. S. at 206).

It was further said:

> "Here we deal not with a State Court conviction but with a federal case, where the specific guarantee of the Sixth Amendment directly applies" (377 U. S. at 205).

II.

There Was No Denial of Equal Protection by the Rulings Below Relating to the Challenges to the Grand and Petit Juries.

The procedure of jury selection in Georgia as set forth in the Brief of Petitioner (p. 47) is essentially correct, except that the jury commissioners select a number of grand jurors from the persons previously selected as traverse jurors in a number not to exceed two-fifths of those selected as traverse (petit) jurors. In other words, the two-fifth's figure is applied to the traverse jurors in selecting the grand jurors, and not to the tax digests in selecting either, as Petitioner's brief indicates. **Pollard v. State**, 148 Ga. 447 (3), 96 S. E. 997 (1918). It should also be emphasized that the actual selection of the venires for each term of court is accomplished by the drawing of tickets containing the names of jurors from the jury boxes, Code §§ 59-203, 59-701. The making up of the panels has nothing to do with the "jury lists", which are merely a recording on the minutes of the Court of the names in the jury boxes. Code § 59-109.

Petitioner contends (A) That the state courts erred in denying him the right to adduce evidence relating to the composition of jury lists in existence prior to the revision in the summer of 1964. (B) That the selection of the jury lists from the tax digest, required by law at this time to list Negro and white taxpayers separately, Code § 92-6307, constitutes a denial of equal protection, and (C) That the disproportion between the number of Negroes

on the tax digest and the number on the grand and petit juries in this case established a prima facie case of discrimination.

A. No Error Results From the Action of the Georgia Courts in Restricting Proof to the Current Jury Lists.

In support of the Plea in Abatement to the indictment (R. 3) and the challenge to the array of traverse jurors (R. 6-8) both based upon alleged racial discrimination in jury selection, counsel for petitioner sought to introduce grand jury lists for previous years, to wit, 1954, 1956, 1958, 1959, 1960, 1962, 1963 (R. 72-3) and traverse jury lists for the years 1954, 1958, 1960, 1961, 1963, and 1965 (R. 73). Objection was made to the lists for prior years on the ground that only the jury lists from which the juries in this case were drawn would be relevant (R. 70, 73). Ruling was initially reserved (R. 72), but subsequently, the Court sustained the objection and ruled out all jury lists other than the 1965 lists from which the grand and traverse juries in this case were selected (R. 147). However, the Court accepted these lists by way of offer of proof (R. 254-298).

However, petitioner made no further offer of proof. Since the burden is on petitioner to prove discrimination, **Akins v. Texas**, 325 U. S. 398, 89 L. Ed. 1692 (1945); **Swain v. Alabama**, 380 U. S. 202, 226, 13 L. Ed. 2d 759 (1965); **Fay v. New York**, 332 U. S. 261, 285, 91 L. Ed. 2043 (1947), it is impossible to tell whether or not there was any discrimination with respect to these prior lists, and hence petitioner failed to carry the burden.

However, regardless of this, respondent submits that even assuming a more complete offer of proof had been made, and even assuming that such evidence would have made out a prima facie case of discrimination, the evidence as to the 1965 jury lists sufficiently rebuts any inference of discrimination.

It plainly appears that the jury boxes were revised in the summer of 1964 (R. 76).[1] "Former errors can not invalidate future trials". . . . It is this particular box that is decisive. **Brown v. Allen**, 344 U. S. 443, 479, 97 L. Ed. 469 (1953). What transpired previously is irrelevant. **Cassell v. Texas**, 339 U. S. 282, 94 L. Ed. 839 (1950). As the population of the County is very small—only 5313 (R. 75)—some member of the Board of Jury Commissioners was personally familiar with every Negro taxpayer in the County (R. 78, 84-5, 87). For the year 1963, there were 1548 white taxpayers and 411 Negro taxpayers in the County—approximately 20% (R. 74). According to the 1960 Census, there were a total of 2656 persons over 21 years, of which only 728 were Negro (R. 75). For the October Term, 1965, at which petitioner was tried, there was one Negro on the Grand jury (R. 86) and at least 4 Negroes on the petit jury list from which the jury trying petitioner was selected (R. 321).[2] Of the 691 non-white persons in Charlton County 25 years of age or older, 302 were functionally illiterate.[3] "[T]here comes a point where this Court should not be ignorant as judges of what we know as men," **Watts v. Indiana**, 338 U. S. 49, 52, 93 L. Ed. 1801 (1949), and "We recognize the fact that these lists have a higher proportion of white citizens than of colored, doubtless due to inequality of educational and economic opportunities." **Brown v.**

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[1] Actually, the revision took place on Sept. 3, 1964, according to the minutes of Court.

[2] The Clerk of Charlton Superior Court advises that there were a total of 479 names on the 1964 traverse jury list, of which he is able to recognize at least 58 as being Negroes; and that on the 1964 grand jury list, there are a total of 147 names, of which at least 11 are Negroes. Of the 99 jurors summoned for traverse jury service at the 1964 October Term, 9 Negroes actually appeared for service.

[3] See United States Census of Population 1960, Georgia, General Social and Economic Characteristics, PC (1) 12 c Ga., p. 334.

Allen, 344 U. S. 443, 473, 97 L. Ed. 469 (1953), and see **Swain v. Alabama**, supra (380 U. S. at 208). To attempt to apply statistical formulas, such as petitioner suggests (Brief p. 58) which assume a complete equality of intelligence, education and other qualities necessary for jury service between the races, in a small rural, agricultural county like Charlton, is not only erroneous, it is absurd. There was no effort here to prove that any large number of Negro taxpayers were qualified for jury service.

In **Swain v. Alabama**, supra, only two Negroes were on the grand jury indicting the accused, and eight were on the panel from which the petit jury was selected, and two of these were exempt. In holding that this did not make out a case of discrimination, this Court said:

> "It is wholly obvious that Alabama has not totally excluded a racial group from either grand or petit jury panels, as was the case in **Norris v. Alabama**, 294 U. S. 587; **Hill v. Texas**, 316 U. S. 400; **Patton v. Mississippi**, 332 U. S. 463; **Hernandez v. Texas**, 347 U. S. 475; and **Reece v. Georgia**, 350 U. S. 85. Moreover, we do not consider an average of six to eight Negroes on these panels as constituting forbidden token inclusion within the meaning of the cases in this Court. **Thomas v. Texas**, 212 U. S. 278; **Akins v. Texas**, 325 U. S. 398; **Avery v. Georgia**, 345 U. S. 559. Nor do we consider the evidence in this case to make out a prima facie case of invidious discrimination under the Fourteenth Amendment."

In **Brown v. Allen**, 344 U. S. 443, 97 L. Ed. 469 (1953), a challenge was overruled where there was only one Negro who served on the grand jury, and eight on the panel from which the petit jury was selected. See also, **Billingsley v. Clayton**, 359 F. 2d 13 (C. A. 5th, 1966).

While token inclusion does not satisfy the Constitution, **Brown v. Allen**, 344 U. S. 443, 471, 97 L. Ed. 469 (1953);

Smith v. Texas, 311 U. S. 128, 130, 85 L. Ed. 84 (1940); **Billingsley v. Clayton**, 359 F. 2d 13 (C. A. 5th, 1966), the mere fact that there are no Negroes on the grand or petit jury in a given case does not establish discrimination, **Virginia v. Rives**, 100 U. S. 313, 25 L. Ed. 667 (1880); **Bush v. Kentucky**, 107 U. S. 110, 117, 27 L. Ed. 354 (1883); **Martin v. Texas**, 200 U. S. 316, 320, 50 L. Ed. 497 (1906); **Akins v. Texas**, supra (325 U. S. at 403); **Hoyt v. Florida**, 368 U. S. 57, 7 L. Ed. 2d (1961); **Fay v. New York**, 332 U. S. 261, 285, 91 L. Ed. 2043 (1947), for "Circumstances or chance may well dictate that no persons in a certain class will serve on a particular jury." **Hoyt v. Florida**, supra. An accused is not entitled to demand proportional representation of his race on the jury in his case. **Thomas v. Texas**, 212 U. S. 278, 53 L. Ed. 512 (1909); **Akins v. Texas**, supra; **Swain v. Alabama**, supra (380 U. S. at 208); **Fay v. New York**, supra (332 U. S. at 291); **Cassell v. Texas**, 339 U. S. 282, 291, 94 L. Ed. 839 (1950); **United States ex rel. Goldsby v. Harpole**, 263 F. 2d 71 (C. A. 5th, 1959), cert. den. 361 U. S. 838; **United States ex rel. Seals v. Wiman**, 304 F. 2d 53 (C. A. 4th, 1962), cert. den. 372 U. S. 924; **Scott v. Walker**, 358 F. 2d 56 (C. A. 5th, 1966); **Billingsley v. Clayton**, 359 F. 2d 13 (C. A. 5th, 1966). Indeed, he is not even entitled to demand that any member of his race serve. **Strauder v. West Virginia**, 100 U. S. 303, 305, 25 L. Ed. 664 (1880); **Virginia v. Rives**, 100 U. S. 313, 25 L. Ed. 667 (1880); **Neal v. Delaware**, 103 U. S. 370, 26 L. Ed. 567 (1881); **Bush v. Kentucky**, supra; **Wood v. Brush**, 140 U. S. 278, 285, 35 L. Ed. 505 (1891); **Jugiro v. Brush**, 140 U. S. 291, 297, 35 L. Ed. 510 (1891); **Akins v. Texas**, supra.

B. **The Use by the Jury Commissioners of the Tax Digest, Required by Law to List Negro Taxpayers Separately, Shows No Violation of the Constitution.**

Georgia law requires that jurors be selected from the books of the tax receiver. Code § 59-106. In this case,

the jury commissioners utilized the tax digests, as distinguished from the individual tax return sheets[4] (R. 77).

Prior to 1966, Code § 92-6307 provided in part:

> "Names of colored and white taxpayers shall be made out separately on the tax digest."

This provision was repealed in 1966 (Ga. Laws 1966, Vol. I, p. 393).

When the jury boxes in question in this case were prepared, however, the tax digests were kept separate, and it is this fact, coupled with the requirement that the jury lists be made from the tax records, that petitioner assails as being unconstitutional, relying upon **Avery v. Georgia**, 345 U. S. 559, 97 L. Ed. 1244 (1953).

A similar contention was rejected in **Maxwell v. Stevens**, 348 F. 2d 325 (C. A. 8th, 1965); **Harris v. Stephens**, 361 F. 2d 888, 892 (C. A. 8th, 1966); and **Brookins v. State**, 221 Ga. 181, 144 S. E. 2d 83 (1965).

The validity of Code § 92-6307 if attacked in a direct proceeding by way of injunction is not at issue here. See **Anderson v. Martin**, 375 U. S. 833, 11 L. Ed. 2d 439 (1964); **Hamm v. Virginia State Board of Elections**, 230 F. Supp. 156 (D. C. Va. 1964), aff'd sub nom. **Tancil v. Woolls**, 379 U. S. 19, 13 L. Ed. 2d 91 (1964). The question is whether under the facts of this case, the practice is seen to be harmful, for harmless error is no ground for complaint. Cf. Rule 61, Fed. Rules Civ. Proc.

In **Avery v. Georgia**, supra, and in **Williams v. Georgia**, 349 U. S. 375, 99 L. Ed. 1161 (1955), this Court held that

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[4] Prior to 1965, the tax return sheets furnished by the State Revenue Department (Code § 92-6302) to all counties were yellow for Negro taxpayers and white for white taxpayers (R. 78). However, this practice was discontinued in 1965, and in any event, since the tax return sheets were not used in this case, this is constitutionally irrelevant.

the placing of the names of white and Negro jurors in the jury box on different colored slips of paper was such error as would require a new trial, where seasonably challenged, on the reasoning that,

> "Even if the white and yellow tickets were drawn from the jury box without discrimination, opportunity was available to resort to it at other stages in the selection process. And, in view of the case before us, where not a single Negro was selected to serve on a panel of sixty—though many were available, we think that petitioner has certainly established a prima facie case of discrimination." **Avery v. Georgia,** supra (345 U. S. at 562).

The determinative factor in **Avery** is the **crucial stage** at which the different colored slips afforded an opportunity for discrimination. The slips are placed in the box to serve the function of affording a fair and impartial means of selecting the venires through the chance drawing of names for each term of court. This procedure by its nature is designed to be so conducted as to eliminate the element of conscious choice in the selection process. It takes place at the critical point when each panel for the coming term of court is in the actual process of being made up. Any distinguishing marks therefore tend to destroy the very element of chance which the drawing of names from a box is designed to achieve. As pointed out by Mr. Justice Frankfurter's concurring opinion in **Avery,** the openings in the jury boxes were of sufficient size to enable the judge drawing the slips to distinguish their color. 345 U. S. at 564. In other words, the different colored slips injected "color" where it was peculiarly important that the selection process be color blind.

Such is not the case here, for the difference is between selecting the jury rolls, and selecting the venires. With

respect to the former, involved in this case, the decisions of this Court place an affirmative duty on jury commissioners to consider race, for in no other way can they be sure that the jury consists of a cross-section of the community:

> "What the Fourteenth Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintances, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them." **Smith v. Texas**, 311 U. S. 128, 132, 85 L. Ed. 84 (1940).

And, in **Hill v. Texas**, 316 U. S. 400, 404, 86 L. Ed. 1559 (1942), this Court declared that it was the duty of jury commissioners imposed by Section 4 of the Civil Rights Act of 1875, to make an "effort to ascertain whether there were within the County members of the colored race qualified to serve as jurors, and if so, who they were." In **Cassell v. Texas**, 339 U. S. 282, 94 L. Ed. 839 (1950), convictions were reversed because of failure of the jury commissioners to acquaint themselves with Negroes in the County in order to ascertain their qualifications. See also **Eubanks v. Louisiana**, 356 U. S. 584, 2 L. Ed. 2d 991 (1958); and **United States ex rel. Seals v. Wiman**, 304 F. 2d 53 (C. A. 5th 1962), cert. den. 372 U. S. 924 (1963).

See also, **Woods v. State**, 222 Ga. 321, ... S. E. 2d ... (1966).

Just recently, the Fifth Circuit alluded to this fact in **Brooks v. Beto**, ... F. 2d ..., 35 L. W. 2077 (July 29, 1966), where it was said that "How then can it be said that conscientiously to do what the Constitution demands makes the result bad because race had been consciously considered to assure that race has not been the basis of discrimination?"

Moreover, any racial differentiation appearing on the tax digests would not give the jury commissioners any information they did not already have. While the process of drawing the venires from the box is intended to be rapid, routine, indiscriminate, and completely without regard to the identity of individuals, the making up of the jury lists is something entirely different. The former is purely a mechanical, impersonal operation. The latter is personal and deliberative. Georgia law imposes certain qualifications for jury service, such as that the juror be "experienced, intelligent and upright," Code § 59-106, and that grand jurors be "above the age of 21 years, being neither idiots, lunatics, nor insane, who have resided in the county for six months preceding the time of serving, and who are the most experienced, intelligent and upright persons . . ." Code § 59-201.

For the jury commissioners to perform their duty in ascertaining these qualifications, they necessarily must either personally know or investigate each prospective juror, and in so doing, it is inevitable that they would either know or discover his racial identity. Moreover, in a county as small as Charlton, it is unlikely that the commissioners would not already know the racial identity of each citizen. Two jury commissioners testified that they knew all of the Negroes in their sections of the county (R. 78, 81-2, 87).

In the present case, there is no evidence to indicate that the separate tax digests actually encouraged any discrimination, nor had any reasonable tendency to do so. Nor is there anything to indicate that the statute requiring separate digests, Code § 92-6307, was ever intended to have this effect. Georgia law had long required that the names of jurors be taken from the county tax books, a not uncommon provision in many states. See Code of Georgia of 1882, § 3910 (b). It was not until 1894 that the predecessor of Code § 92-6307 was enacted, with pas-

sage that year of a brief act limited to this section only (Ga. Laws 1894, p. 31).

The legislative background of the Act of 1894 discloses that it was not designed to serve a discriminatory purpose. The 1890's were times of great political unrest in Georgia. The Populist Movement was sweeping the country and threatening to divide the Democratic Party. At this time, no provision was made by law for the registration of voters, persons could vote at any election box in the county, often voted at more than one, and at the elections held in 1892, fraud was rampant on both sides. As one historian stated:

> "This election throughout the state was a pathetic example of the venality that too often accompanies the rule by the people. Negro voters were bought and sold like merchandise and herded around the polls like so many cattle. They were fed at barbecues and made drunk and penned up to prevent them from voting, if they could not be otherwise controlled. Most of them who voted were in the hands of the regular Democrats." Coulter, **Georgia, A Short History**, p. 393 (1947).

Another commentator elaborates even further:

> "Many of the planters, owners of turpentine stills, and other employers took their 'hands' to the polls and voted them in gangs. In some of the towns and cities, all-night revelries were held for the darkies on the night before election. Barbecue was served with whiskey and beer by the barrel. Next morning the dusky revelers were marched to the polls by beat of drums, carefully guarded lest some desert in search of another reward. In some of the cities bands of them were taken from one polling place to another and voted under different names. According to the testimony produced in the Watson-Black contested election case,

> Negroes were brought over from South Carolina in four-horse wagons and voted at various precincts in Augusta. The total vote in that city was double the number of legal voters, eighty per cent of it being Democratic. Somewhat similar methods were employed in the smaller towns. In the country, a considerable number of Populist precincts were thrown out on technicalities. The Democrats were not the only sinners, to be sure; but they were more resourceful, and hence more successful at the game." Alex Mathews Arnett, "The Populist Movement in Georgia", 7 Ga. Hist. Quart. 313, 332 (1923).

The immediate reaction was a demand for election reform. In his "State of the State" address to the 1894 General Assembly, Governor Northen called for a voter's registration law. House Jour. 1894, p. 42. Throughout the months of October and November, 1894, the **Atlanta Constitution** called for an election bill to insure that only qualified persons would be able to vote. See, e. g., issue of Sunday, November 4, p. 18. On November 6, 1894, an election was held at which widespread charges of vote frauds were again reported on both sides in connection with the Tenth District Congressional race in which Tom Watson lost his seat. See **Atlanta Constitution,** November 8, 1894, at p. 4; Id., issue of November 9, p. 4.

The result was passage of Georgia's first registration law (Ga. Laws 1894, p. 115). This Act was designed to insure (1) That only persons duly qualified by registration would be permitted to vote, and (2) That a voter would be permitted to vote only in the district of his residence. Throughout the Act, emphasis was placed on requirements which would enable the responsible officials to properly identify persons claiming a right to register to vote. Conversant with the particular problems previously experienced with Negro voters, the registration act required identification by race, but it should be noted

that the act imposed only purely objective requirements, the literacy requirement not appearing in the law until 14 years later in 1908 (Ga. Laws 1908, p. 27). Undoubtedly, the identification requirement was made necessary by the fact that traditionally many Negroes were named in honor of their former masters, and after emancipation, their employers.

Under the Constitution in existence at this time, only those persons who had paid all taxes[5] due the state and county were permitted to vote (Const. of 1877, Art. II, Par. II; **McElreath on the Constitution of Georgia,** § 854), and in order to facilitate identification of taxpayers from the tax records during the registration process, House Bill 141, which later became § 92-6307, was introduced in the House of Representatives by Representative Rawlings on November 14, 1894 (House J. 1894, p. 230). The Atlanta Constitution of Thursday, November 15, 1894, at p. 7, reported the introduction of this bill as part of a story headed "Registration and Elections," which, after referring to the progress of the Voters' Registration Bill, stated:

> "Another bill bearing upon qualifications of voters is by Mr. Rawlings of Washington. He provides that it shall be the duty of the tax receivers of the several counties to place the names of the colored taxpayers in each militia district upon the tax digest in alphabetical order and it is provided that the names of the colored and white taxpayers shall be made out separately on the tax digest.
>
> 'The occasion for that bill,' said Mr. Rawlings, 'is simply this: Under the present law there is no requirement of this kind and the tax receivers are in the habit of placing the names of the Negro taxpayers

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[5] This related only to ad valorem taxes. The poll tax was not enacted until 1927 (Ga. Laws 1927, p. 57; Code of 1933, § 92-108).

with those of the whites and it is impossible to find out with any degree of ease whether a Negro's name is on the tax digest. You see, it is pretty necessary to know this in election times. This is due to the habit of placing a man's Negro employees with his name on the tax digest. For instance, Mr. Smith's property is returned and with his name is placed the names of the Negroes who work for him and whose names he gives in. My bill provides for separate lists of colored and white taxpayers and that each list shall be kept alphabetically.' "

The foregoing demonstrates that Code § 92-6307 was never designed as a means of encouraging or facilitating discrimination. It was but part of a voters' registration effort aimed at preventing vote frauds through voting by unauthorized persons. It could very easily serve the same function today, for many Negro citizens bear the same names as white citizens of their area. Notwithstanding, the General Assembly repealed this part of the law this year (Ga. Laws 1966, p. 393).

Respondent deems it also important to point out to the Court the effect of any such ruling as urged here. Under the rulings by the Fifth Circuit in **United States ex rel. Goldsby v. Harpole**, 263 F. 2d 71 (C. A. 5th 1964), and particularly the decision in this case, 333 F. 2d 496, it is virtually impossible for this issue to be waived, when challenged by federal habeas corpus. There are 4896 Negroes now confined in the Georgia prison system. If petitioner prevails on this question, every one of these prisoners will have to be retried. Such chaos should not be countenanced.

(C) **There Was No Prima Facie Showing of Discrimination From the Statistics.**

This contention was previously argued in Part A, supra.

CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 251.—October Term, 1966.

Isaac Sims, Jr., Petitioner, v. State of Georgia.	On Writ of Certiorari to the Supreme Court of the State of Georgia.

[January 23, 1967.]

Mr. Justice Clark delivered the opinion of the Court.

Petitioner, a Negro, has been convicted of raping a white woman and has been given the death penalty. He raises five federal questions [1] for consideration by this

[1] The five questions are:

"1. Whether petitioner's Fourteenth Amendment rights were violated by a conviction and sentence to death obtained on the basis of a confession made under inherently coercive circumstances within the doctrine of *Fikes* v. *Alabama*, 352 U. S. 191.

"2. Whether petitioner's Fourteenth Amendment rights were violated by the failure of the Georgia courts to afford a fair and reliable procedure for determining the voluntariness of his alleged coerced confession in disregard of the principle of *Jackson* v. *Denno*, 378 U. S. 368.

"3. Whether petitioner's Fourteenth Amendment right to counsel as declared in *Escobedo* v. *Illinois*, 378 U. S. 478, was violated by the use of his confession obtained during police interrogation in the absence of counsel, or whether petitioner's right to counsel was effectively waived.

"4. Is a conviction constitutional where:

"(a) local practice pursuant to state statute requires racially segregated tax books and county jurors are selected from such books;

"(b) the number of Negroes chosen is only 5% of the jurors but they comprise about 20% of the taxpayers; and

"(c) a Negro criminal defendant's offer to prove a practice of arbitrary and systematic Negro inclusion or exclusion based on jury lists of the prior ten years is disallowed?

"5. Where a Negro defendants sentenced to death in Georgia for the rape of a white woman offers to prove that nineteen times as many Negroes as whites have been executed for rape in Georgia in

Court, among which is that his Fourteenth Amendment rights to a fair trial were violated by the state trial judge's failure to determine the voluntariness of his alleged confession prior to its admission into evidence before the jury, as required by the rule in *Jackson* v. *Denno*, 378 U. S. 368 (1964). The Supreme Court of Georgia ruled that *Jackson* was not applicable and affirmed petitioner's conviction, *Sims* v. *State*, 221 Ga. 190, 144 S. E. 2d 103. We granted certiorari limited to the five questions, 384 U. S. 998. We have determined that petitioner's case is controlled by *Jackson*, *supra*, and therefore we do not reach any of the other issues raised.

I.

The record indicates that on April 13, 1963, a 29-year-old white woman was driving home alone in her automobile when petitioner drove up behind her in his car, forced her off the road into a ditch, took the woman from her car into nearby woods and forcibly raped her. When he returned to his car, he could not start the engine so he left the scene on foot. Some four hours later he was apprehended by some Negro workers who had been alerted to be on the watch for him. He told these Negroes that he had attacked a white woman. They then turned petitioner over to their employer who delivered him to two state patrolmen. He was then taken to the office of a Doctor Jackson who had previously examined the victim. Petitioner's clothing was removed in order to test it for blood stains. Petitioner testified that while he was in Doctor Jackson's office he was knocked down, kicked over the right eye and pulled around the floor by his private parts. He was taken

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an effort to show that racial discrimination violating the equal protection clause of the Fourteenth Amendment produced such a result, may this offer of proof be disallowed?"

to a hospital owned by Doctor Jackson, which was adjacent to his office, where four stitches were taken in his forehead. Thereafter the patrolmen took petitioner to Waycross, Georgia, some 30 miles distant, where he was placed in the county jail. During that evening, he saw a deputy sheriff whom he had known for some 13 years and who was on duty on the same floor of the jail where petitioner was incarcerated. He agreed to make a statement and was taken to an interview room where, in the presence of the Sheriff, the Deputy Sheriff and two police officers, he signed a written confession. Two days later he was arraigned.

Prior to trial petitioner filed a motion to suppress the confession as being the result of coercion. A hearing was held before the court out of the presence of the jury. The sheriff and the deputy testified to the circumstances surrounding the taking and signing of the confession. Petitioner testified as to the abuse he had received while in Doctor Jackson's office. He testified that he "felt pretty rough for about two or three weeks [after the incident], more on my private than I did on my face" and that he "was paining a right smart." There was no contradictory testimony taken. The court denied the motion to suppress without opinion or findings and the confession was admitted into evidence at petitioner's trial.

At the trial, Doctor Jackson was a witness for the state. On cross-examination he denied that he had knocked petitioner down while the latter was in his office, or that he had kicked him in the forehead but made no mention of the other abuse about which petitioner testified. The doctor stated that petitioner was not abused in his presence but he refused to say whether the patrolmen present abused petitioner as he

was not in the office at all times while the petitioner was there with the patrolmen. In this state of the record petitioner's testimony in this regard was left uncontradicted.

II.

There is no actual ruling or finding in the record showing that the trial judge determined the voluntariness of the confession. Although he admitted it into evidence, it appears that he was only following a long-standing state practice that the "State having made out a prima facie case that the alleged confession was freely and voluntarily made, it was a question for the jury to determine on conflicting evidence whether the alleged confession was freely and voluntarily made." *Downs* v. *State*, 208 Ga. 619, 68 S. E. 2d 568. Defense counsel called the court's attention to the *Jackson v. Denno* ruling of this Court and stated that he did not "know whether the procedure being followed at this time satisfies the rule decided by the Supreme Court on June 22nd, 1964, that the Court must make judicial determination whether the statement was made voluntarily before it is read to the jury." In his charge to the jury the judge directed that it was for the jury to determine whether the confession was actually made or not and to disregard it if not made freely and voluntarily.

III.

On appeal to the Supreme Court of Georgia, it was held proper for the trial judge to have left the question of the voluntariness of the confession to the jury with instructions that they should disregard it if they should determine that it was not, in fact, voluntarily made. Indeed, that court specifically found that the "related facts made a prima facie showing that the statement was freely and voluntarily made and admissible in evidence." 221 Ga., at 198, 144 S. E. 2d, at 110. It there-

fore seems clear from the opinion of the highest court of Georgia that it has applied its own rule rather than follow the rule set down in *Jackson* for the procedural determination of the voluntariness of a confession. This conclusion is buttressed by the fact that the court below also found that the "Georgia rule presents the question to the jury without giving them the judgment of the judge." *Id.*, at 200, 144 S. E. 2d, at 111. This is the exact procedural device which is proscribed by the rule in *Jackson*.

IV.

The Supreme Court of Georgia reasoned, however, that *Jackson* was not applicable because of the safeguards that Georgia's laws erect around the use of confessions. It pointed out that under Georgia law, before a confession may be admitted it must be corroborated and a showing made that it was freely and voluntarily given. In addition, the trial judge has the power to set aside the verdict of the jury and grant a new trial if, in his opinion, the jury was in error. The court concluded that the rule in *Jackson* is satisfied by Georgia law and that "It would be difficult to find a more complete satisfaction of the requirement of Jackson than Georgia provides." *Id.*, at 200, 144 S. E. 2d, at 111. The court also felt that if this not be true, in any event, "the unsound implications of Jackson should not be extended one iota to make it cover cases not explicitly covered by it such as this case where there was no evidence to make any issue of voluntariness. Without an issue there is nothing to try." We cannot agree. There was a definite, clear-cut issue here. Petitioner testified that Doctor Jackson physically abused him while he was in his office and that he was suffering from that abuse when he made the statement, thereby rendering such confession involuntary and the result of coercion. The doctor admitted that he saw petitioner on the floor of

his office; that he helped him disrobe and that he knew that petitioner required hospital treatment because of the laceration over his eye but he denied that petitioner was actually abused in his presence. He was unable to state, however, that the state patrolmen did not commit the alleged offenses against petitioner's person because he was not in the room during the entire time in which the petitioner and the patrolmen were there. In fact, the doctor was quite evasive in his testimony and none of the officers present during the incident were produced as witnesses. Petitioner's claim of mistreatment, therefore, went uncontradicted as to the officers and was in conflict with the testimony of the physician. Under *Jackson*, it was for the trial judge to first decide these conflicts and discrepancies. This he failed to do.

Furthermore, Georgia's highest court, in finding that its rule satisfied the requirements of *Jackson*, overlooks the fact that the same safeguards offered by the Georgia practice, were present in the procedures of New York in *Jackson* and were rejected by this Court. A constitutional rule was laid down in that case that a jury is not to hear of a confession unless and until the trial judge has determined that it was freely and voluntarily given. The rule allows the jury, if it so chooses, to give absolutely no weight to the confession in determining the guilt or innocence of the defendant but it is not for the jury to make the primary determination of voluntariness. Although the judge need not make formal findings of fact or write an opinion, his conclusion that the confession is voluntary must appear from the record with unmistakable clarity. Here there has been absolutely no ruling on that issue and it is therefore impossible to know whether the judge thought the confession voluntary or if the jury considered it as such in their determination of guilt. *Jackson*, having been decided June 22, 1964, was binding on the courts of

Georgia in this case, it having been tried October 7, 1964. Such rule is, as we have said, a constitutional rule binding upon the States and, under the Supremacy Clause of Article VI of the Constitution, it must be obeyed.

The judgment is, therefore, reversed and cause is remanded for a hearing as provided by *Jackson* v. *Denno*, *supra*, at 393–396.[2]

It is so ordered.

MR. JUSTICE BLACK dissents for the reasons stated in his dissent in *Jackson* v. *Denno*, 378 U. S., at 401.

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[2] This disposition is in keeping with the teaching of *Jackson*, *supra*, that "a determination of voluntariness" should occur initially "in the state courts in accordance with valid state procedures . . . before this Court considers the case on direct review or a petition for habeas corpus is filed in a Federal District Court." 378 U. S., at 393.